NorthWestern Energy

CELEBRATING OUR FIRST CENTURY 1912 - 2012 BUILDING FOR OUR SECOND

November 19, 2012

Ms. Kate Whitney
Utility Division
Montana Public Service Commission
1701 Prospect Avenue
PO Box 2022601
Helena, Montana 59620-2601

Re: Docket No. D2012.5.49 Electric Tracker
NorthWestern Energy's 2nd Updated Response to Data Request PSC-007e in PSC Set 2 (006-013)

Dear Ms. Whitney:

Enclosed for filing is a copy of NorthWestern Energy's 2nd updated response to Data Request PSC-007e. This updated response has been mailed to the service list in this docket. It has been efiled with the PSC.

Should you have questions please contact Joe Schwartzenberger at (406) 497-3362.

Sincerely,

Nedra Chase

Nedra Chase
Administrative Assistant

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's 2nd updated response to PSC-007e in PSC Set 2 Data Requests (006-013) in Docket D2012.5.49 Electric Tracker has been served by mailing a copy thereof by first class mail, postage prepaid to the service list in this Docket. These responses have also been efiled with the PSC.

Date: November 19, 2012

Nedra Chase

Nedra Chase
Administrative Assistant
Regulatory Affairs

A. Service List
D2012.5.49

Al Brogan
NorthWestern Energy
208 N. Montana Ave Ste 205
Helena MT 59601

Nedra Chase
NorthWestern Energy
40 E.Broadway
Butte MT 59701

Charles Magraw
501 8th Ave.
Helena MT 59601

Robert Nelson
Montana Consumer Counsel
111 N. Last Chance Gulch
Suite 1B
Helena MT 59620-1703

Sarah Norcott
NorthWestern Energy
208 N. Montana Ave Ste 205
Helena MT 59601

Dr. Thomas M. Power
920 Evans Ave.
Missoula MT 59801

Joe Schwartzenberger
NorthWestern Energy
40 E. Broadway
Butte MT 59701

Kate Whitney
Public Service Commission
1701 Prospect Ave.
P O Box 202601
Helena MT 59620-2601

John W. Wilson
JW Wilson & Associates
1601 North Kent St. Ste 1104
Arlington VA 22209

NorthWestern Energy
Docket D2012.5.49
Electric Tracker

Montana Public Service Commission (PSC)
Set 2 (006-013)

Data Requests received July 13, 2012

PSC-007

Regarding: Replacement Contracts for Regulation Service
Witness: Cashell

a. Please identify any entity that NWE contacted to procure regulation service during the tracker period.

b. Please provide any pricing information possessed by NWE related to the replacement regulation service that was available or procured following the outage at DGGS.

c. Please provide any correspondence between NWE and other entities offering or potentially offering regulation service in 2012.

d. Please provide any contracts for regulation service that NWE entered into in 2012.

e. Please provide any documentation NWE possesses, correspondence between NWE employees, or correspondence between NWE employees and others related to the procurement of third-party replacement regulation service after the outage.

RESPONSE:

a. NorthWestern contacted the three entities that submitted bids in response to NWE's RFP in late 2011. The bidders were Avista Corp., Powerex Corp., and Grant County PUD. All three were previous providers of regulation service to NorthWestern.

b. NorthWestern procured regulation service during the DGGS outage from Avista and Powerex. Attachments 1, 2, and 3 are those executed contracts with pricing information. NorthWestern did not contract with Grant PUD for regulation service, but Attachment 4 contains the informal pricing information that Grant provided in several emails to NorthWestern.

PSC-007 cont'd

c. Because the subject of this request is "Regarding: Replacement Contracts for Regulation Service," NWE has interpreted this request to not apply to the September 2009 RFP for wind regulation service, which requested that respondents include a minimum term of one year, beginning January 1, 2011. NorthWestern also issued an RFP for regulation service in October of 2011 for service beginning Jan. 1, 2013, which was not for replacement contracts for regulation service.

The only correspondence in NorthWestern's possession with respect to offers of regulation service in 2012 regarding replacement contracts will be provided in response to part e, below.

d. See the response to part b, above.

e. Some of the documentation and correspondence requested by this data request may be subject to the attorney/client privilege or the work product doctrine. NorthWestern objects to this data request to the extent that it requests any such documentation or correspondence. NorthWestern will provide a privilege log of any documents or correspondence that it withholds on the basis of attorney/client privilege or work product doctrine.

An email search is under way for documents responsive to this request. Results will be provided as soon as they are available. The relevant period was determined to be January 12, 2012 through May 31, 2012. The search terms chosen were (Powerex or Avista or Grant) **and** (regulation). The custodians chosen were Mike Cashell, Casey Johnston, Mike McGowan, Andrew McLain, Heather Grahame, and Al Brogan.

UPDATED RESPONSE (November 8, 2012):

e. See Attachment 1 inside the folder named PSC-007e on the enclosed CD. It is a PDF file of emails and attachments pertaining to discussions about the possible procurement of replacement regulation service after the outage from Grant County PUD and Avista Corp. Additional documents responsive to this request are currently under review by Powerex Corp., which was granted permission to protect certain information contained within them under Commission Order No. 7219d. Both public and protected versions of these documents will be provided as soon as this review is complete.

PSC-007 cont'd

SECOND UPDATED RESPONSE (November 19, 2012):

e. See Attachments 2 and 3 on the enclosed CD. They contain emails and attachments pertaining to discussions about the possible procurement of replacement regulation service after the outage from Powerex Corp. Powerex staff reviewed these materials and determined that none of the information contained therein warranted protection.

Moran, Connie C

From: McGowan, Michael
Sent: Monday, January 23, 2012 10:29 AM
To: O'Connor, Frank
Cc: Johnston, Casey E
Subject: Regulation RFP Question for Independent Monitor

Importance: High

Frank,

Could you contact Jon Ogur and ask him to verify with PowerEx that NorthWestern is able to take a portion of the MW in the 3 tiers offered. For example, would NorthWestern be able to procure 70 MW of regulation from PowerEx with the Tier structures they propose? We are interpreting that we are able to this by taking 30 MW from Tier 1, 30 MW from Tier 2, and 10 out of the 45 MW offered in Tier 3.

Or is it PowerEx's intent that we can only buy in the full Tier blocks, meaning NorthWestern could only purchase 30 MW, an additional 30 MW, and then an additional 45 MW?

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Moran, Connie C

From: O'Connor, Frank
Sent: Tuesday, January 24, 2012 11:05 AM
To: Johnston, Casey E; McGowan, Michael
Subject: FW: Questions on Powerex Proposal

FYI

Thanks,
Frank

Frank O'Connor
Electric Transmission Specialist
NorthWestern Energy
(406) 497-3126

From: Jon Ogur [mailto:ogur@bwmq.com]
Sent: Tuesday, January 24, 2012 11:02 AM
To: O'Connor, Frank
Subject: FW: Questions on Powerex Proposal

Here's Powerex's response.

Jonathan Ogur, Associate
Brown, Williams, Moorhead & Quinn, Inc.
1155 15th Street N.W., Suite 400
Washington, DC 20005
(202) 775-8994
fax (202) 223-9159
www.bwmq.com

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From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Tuesday, January 24, 2012 11:31 AM
To: Jon Ogur
Subject: RE: Questions on Powerex Proposal

Yes, NorthWestern would be able to take a portion of the MW of the tier. If NorthWestern were to take 70 MW, it is correct to interpret that NorthWestern would be able to do this by taking 30 MW from Tier 1, 30 MW from Tier 2, and 10 out of the 45 MW offered in Tier 3.

Please let me know if I can provide any more information.

Thank you,
Meredith

Meredith Aitken
Marketing Manager, Powerex Corp.
Desk: 604-891-5014
Cell: 604-644-5189
Email: Meredith.Aitken@powerex.com

From: Jon Ogur [mailto:ogur@bwmq.com]
Sent: Tuesday, January 24, 2012 6:33 AM
To: Aitken, Meredith
Subject: Questions on Powerex Proposal

Please verify that NorthWestern would be able to take a portion of the MW in the 3 tiers offered. For example, would NorthWestern be able to procure 70 MW of regulation from PowerEx with the proposed Tier structures? Is it correct to interpret that NorthWestern would be able to do this by taking 30 MW from Tier 1, 30 MW from Tier 2, and 10 out of the 45 MW offered in Tier 3? Or is it PowerEx's intent that NorthWestern would only be able to buy in the full Tier blocks, meaning NorthWestern could only purchase 30 MW, an additional 30 MW, and then an additional 45 MW?

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Moran, Connie C

From: Jon Ogur [ogur@bwmq.com]
Sent: Tuesday, January 31, 2012 7:13 AM
To: O'Connor, Frank; McGowan, Michael; Brugger, Richard A (Rich)
Subject: FW: Question on Powerex Proposal

Frank,

See below for Powerex's response to NorthWestern's questions.

Jon

Jonathan Ogur, Associate
Brown, Williams, Moorhead & Quinn, Inc.
1155 15th Street N.W., Suite 400
Washington, DC 20005
(202) 775-8994
fax (202) 223-9159
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From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Monday, January 30, 2012 5:49 PM
To: Jon Ogur
Subject: RE: Question on Powerex Proposal

Jon,

The following tables show the information requested for BPA and BCHA (formerly BCTC) transmission. Please let me know if I can provide additional information.

Powerex will pass through the prevailing tariff rates for transmission in the same manner as was done in the previous regulation supply agreement. Powerex will not apply mark-up fees.

BPA NW tariff rates are as follows:

BPA PTP (US$/kWmonth)	1.298
BPA Scheduling (US$/kWmonth)	0.203
BPA Reactive (US$/kWmonth)	0

BPA losses on the energy are as follows:

BPA Losses	1.9%

BCHA tariff rates are as follows:

BCHA (CDN$/MW)	5.36	~CDN$3.913/kWmonth
BCHA Scheduling (CDN$/MW)	0.131	~CDN$0.096/kWmonth
BCHA Reactive (CDN$/MW)	0.825	~CDN$0.602/kWmonth

BCHA losses on the energy are as follows:

BCHA Losses	6.28%

In the past agreements, we fixed the exchange rate at the time of deal execution to convert Canadian currency to US. Today, $1.00 CAD is approximately $0.9958 USD so nearly at par if it were to be fixed today.

These tariff rates are documented at the following sites:
http://transmission.bpa.gov/Business/Rates/documents/2012_rate_schedule_summary_090811.pdf
http://transmission.bpa.gov/Business/Rates/documents/2012_rate_schedules.pdf
http://transmission.bchydro.com/regulatory_filings/tariff/tariff_documents/open_access_tariff.htm

Best regards,
Meredith

From: Jon Ogur [mailto:ogur@bwmq.com]
Sent: Friday, January 27, 2012 8:57 AM
To: Aitken, Meredith
Subject: Question on Powerex Proposal

Meredith,

Please verify PowerEx's third party transmission rates in kW-month. Please also break out the transmission charge and identify any taxes and/or markups (fees) that may be added to the cost of transmission. Please provide this information for both BCTC and BPA, e.g.

Transmission =$.$$ kW-month + %% Tax + any Powerex markup (fees)= Total Cost kW-month

This will help to verify the amounts Powerex quoted in their proposal and the % taxes and markup Powerex may be adding.

Thanks.

Jon

Jonathan Ogur, Associate
Brown, Williams, Moorhead & Quinn, Inc.
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Washington, DC 20005
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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Wednesday, February 01, 2012 9:59 AM
To: McGowan, Michael
Cc: Johnston, Casey E
Subject: RE: NWMT RFP Redline

Mike,

Thank you for providing the draft. We will review it right away. With respect to quantity, is it safe to say you expect ~50 MW or might is there a higher potential max? I want to make sure we plan appropriately.

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 01, 2012 8:54 AM
To: Aitken, Meredith
Cc: Johnston, Casey E; McGowan, Michael
Subject: NWMT RFP Redline
Importance: High

Meredith,

Attached is the DRAFT of the agreement for Regulation as we discussed. Some talking points we would like to discuss is of course the MW amount you can offer, along with a discussion on the Term. I am still piecing together the amounts we are going to ultimately need, so we will need to have a further discussion on that. In the redline we have the service through April 2012, with extensions through Jan. 31, 2013 if needed. We have addressed increasing capacity in the contract, but will also need to have a discussion with PowerEx about decreasing the amount needed (ramp down) over time.

Please review and I we can talk some more about this later today. We would like to try to get filings, etc. done as soon as today or tomorrow if it is a possibility.

Again thank you for your help on this and elevating its importance.

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Wednesday, February 01, 2012 4:44 PM
To: McGowan, Michael
Subject: RE: NWMT RFP Redline

Mike,

The test went well today. We are working on turning the agreement back to you soon. It is with our legal, but in the interim, I thought it would be helpful to send our assumptions on commercial terms to summarize various conversations today.

We will split it into two agreements: (1) Feb 2012 and (2) March 2012-Jan 2013.

The quantity will start at 70 MW. NorthWestern will have the right to decrease the quantity with 15 days' notice for March and with 30 days' notice for later months. Decreases can be to any even MW or to 0. Increases will be upon mutual agreement.

Pricing will be as follows:

Capacity Charge

First 30 MW	Next 30 MW	Next 10 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

~$9.43/wk-month for 70 MW.

Please let me know if I missed anything.

Thanks,
Meredith
604-891-5014

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Moran, Connie C

From: McGowan, Michael
Sent: Wednesday, February 01, 2012 4:59 PM
To: 'Aitken, Meredith'
Cc: McGowan, Michael
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Meridith, this looks good. Only other item is that there will be a 35 MW counter schedule back to PowerEx. We planned to arrange that to the MT border at BPAT.NWMT.

Do you think we will be able to execute this agreement tomorrow morning?

Mike McGowan

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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Wednesday, February 01, 2012 5:06 PM
To: McGowan, Michael
Subject: RE: NWMT RFP Redline

Thanks. We are working to resolve FERC approval questions with the goal of executing in the morning.

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 01, 2012 3:59 PM
To: Aitken, Meredith
Cc: McGowan, Michael
Subject: RE: NWMT RFP Redline

Meridith, this looks good. Only other item is that there will be a 35 MW counter schedule back to PowerEx. We planned to arrange that to the MT border at BPAT.NWMT.

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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, February 02, 2012 4:52 PM
To: McGowan, Michael
Subject: RE: NWMT RFP Redline

Mike,

I am working to wrap up the March agreement. Should it go through Jan 2013 or through Dec 2012?

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 01, 2012 3:59 PM
To: Aitken, Meredith
Cc: McGowan, Michael
Subject: RE: NWMT RFP Redline

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Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, February 02, 2012 4:59 PM
To: McGowan, Michael
Subject: RE: NWMT RFP Redline

Will do. Thanks.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Thursday, February 02, 2012 3:59 PM
To: Aitken, Meredith
Subject: RE: NWMT RFP Redline

Meredith, can we end this contract on Jan. 8, 2013?

Thanks,

Mike McGowan

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Thursday, February 02, 2012 4:52 PM
To: McGowan, Michael
Subject: RE: NWMT RFP Redline

Mike,

I am working to wrap up the March agreement. Should it go through Jan 2013 or through Dec 2012?

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 01, 2012 3:59 PM
To: Aitken, Meredith
Cc: McGowan, Michael
Subject: RE: NWMT RFP Redline

Meridith, this looks good. Only other item is that there will be a 35 MW counter schedule back to PowerEx. We planned to arrange that to the MT border at BPAT.NWMT.

Do you think we will be able to execute this agreement tomorrow morning?

Mike McGowan

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Wednesday, February 01, 2012 4:44 PM
To: McGowan, Michael
Subject: RE: NWMT RFP Redline

Mike,

The test went well today. We are working on turning the agreement back to you soon. It is with our legal, but in the interim, I thought it would be helpful to send our assumptions on commercial terms to summarize various conversations today.

We will split it into two agreements: (1) Feb 2012 and (2) March 2012-Jan 2013.

The quantity will start at 70 MW. NorthWestern will have the right to decrease the quantity with 15 days' notice for March and with 30 days' notice for later months. Decreases can be to any even MW or to 0. Increases will be upon mutual agreement.

Pricing will be as follows:

Capacity Charge

First 30 MW	Next 30 MW	Next 10 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

~$9.43/wk-month for 70 MW.

Please let me know if I missed anything.

Thanks,
Meredith
604-891-5014

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 01, 2012 8:54 AM
To: Aitken, Meredith
Cc: Johnston, Casey E; McGowan, Michael
Subject: NWMT RFP Redline
Importance: High

Meredith,

Attached is the DRAFT of the agreement for Regulation as we discussed. Some talking points we would like to discuss is of course the MW amount you can offer, along with a discussion on the Term. I am still piecing together the amounts we are going to ultimately need, so we will need to have a further discussion on that. In the redline we have the service through April 2012, with extensions through Jan. 31, 2013 if needed. We have addressed increasing capacity in the contract, but will also need to have a discussion with PowerEx about decreasing the amount needed (ramp down) over time.

Please review and I we can talk some more about this later today. We would like to try to get filings, etc. done as soon as today or tomorrow if it is a possibility.

Again thank you for your help on this and elevating its importance.

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Wednesday, February 29, 2012 10:49 AM
To: McGowan, Michael
Cc: Johnston, Casey E; Powers, Patrick; Cook, Laura Lynn; Brugger, Richard A (Rich)
Subject: RE: Regulation Reduction March 1, 2012 at HE0100 Pacific

Mike,

Thank you for the email. We confirm that the regulation quantity will reduce to 50 MW for March 1 HE0100 PPT and the corresponding balancing energy will be 25 MW.

Best regards,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 29, 2012 6:59 AM
To: Aitken, Meredith
Cc: Johnston, Casey E; Powers, Patrick; Cook, Laura Lynn; Brugger, Richard A (Rich)
Subject: Regulation Reduction March 1, 2012 at HE0100 Pacific
Importance: High

Meredith,

How are you? NorthWestern wanted to confirm with you that the Regulation being provided by PowerEx will be changing as follows:

- At Hour Ending (HE)0100 Pacific on March 1, 2012, regulation provided will reduce to 50 MW.
- PWX has reduced the amount of transmission needed to the 50 MW for HE0100 Pacific on March 1, 2012 and beyond.
- The counter schedule will be reduced to 25 MW for HE0100 Pacific on March 1, 2012 and beyond.

We just wanted to make sure everything is looking good and we are all on the same page for timing.

Let us know when you can Meredith.

Thanks,

Michael McGowan
Manager, Electric Transmission Services
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40 E. Broadway
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Moran, Connie C

From: McGowan, Michael
Sent: Wednesday, March 14, 2012 4:05 PM
To: 'Aitken, Meredith'
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael
Subject: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Importance: High

Meredith,

NorthWestern would like to provide notice to PowerEx to reduce the regulation service provided to NorthWestern by the following:

- At Hour Ending (HE) 0100 Pacific on April 1, 2012, regulation will be reduced from 50 MW to 24 MW (counter schedule will be adjusted to 12 MW)
- At Hour Ending (HE) 0100 Pacific on April 15, 2012, regulation will be reduced from 24 MW to 10 MW (counter schedule will be adjusted to 5 MW)

Please confirm these changes when you can.

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, March 15, 2012 8:55 AM
To: McGowan, Michael
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); Ratzlaff, Jay
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Mike,

Thank you. We confirm receipt of your request.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, March 14, 2012 3:05 PM
To: Aitken, Meredith
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael
Subject: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific
Importance: High

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- At Hour Ending (HE) 0100 Pacific on April 15, 2012, regulation will be reduced from 24 MW to 10 MW (counter schedule will be adjusted to 5 MW)

Please confirm these changes when you can.

Thanks,

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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, March 15, 2012 8:57 AM
To: McGowan, Michael
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Mike,

Can you also please acknowledge that NorthWestern agrees to pay for 24 MW transmission for the month?

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, March 14, 2012 3:05 PM
To: Aitken, Meredith
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael
Subject: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific
Importance: High

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- At Hour Ending (HE) 0100 Pacific on April 1, 2012, regulation will be reduced from 50 MW to 24 MW (counter schedule will be adjusted to 12 MW)
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Please confirm these changes when you can.

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Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, March 15, 2012 10:32 AM
To: McGowan, Michael
Cc: Johnston, Casey E
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Mike, yes, we can work to do that to help keep costs down. We will arrange for 10 MW for the month now and then supplement it with 14 MW weekly when that window opens.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Thursday, March 15, 2012 8:07 AM
To: Aitken, Meredith
Cc: Johnston, Casey E
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Meredith, just a question, but is it possible to purchase Transmission in the shorter term for the increments of the regulation provided to help keep costs down? If that is not the case NorthWestern I can send you an email with agreement.

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Thursday, March 15, 2012 8:57 AM
To: McGowan, Michael
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Mike,

Can you also please acknowledge that NorthWestern agrees to pay for 24 MW transmission for the month?

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, March 14, 2012 3:05 PM
To: Aitken, Meredith
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael
Subject: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific
Importance: High

Meredith,

NorthWestern would like to provide notice to PowerEx to reduce the regulation service provided to NorthWestern by the following:

- At Hour Ending (HE) 0100 Pacific on April 1, 2012, regulation will be reduced from 50 MW to 24 MW (counter schedule will be adjusted to 12 MW)
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Please confirm these changes when you can.

Thanks,

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Moran, Connie C

From: McGowan, Michael
Sent: Friday, March 30, 2012 8:58 AM
To: 'scott.humphreys@powerex.com'
Cc: McGowan, Michael
Subject: FW: Regulation Reduction May 1, 2012 at HE0100 Pacific

Importance: High

Scott, I wanted to provide you with the notice below, as I received an email that Meredith Aitken is currently out of the office.

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

From: McGowan, Michael
Sent: Friday, March 30, 2012 8:57 AM
To: 'jay.ratzlaff@powerex.com'; 'Aitken, Meredith'
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael; McLain, Andrew
Subject: Regulation Reduction May 1, 2012 at HE0100 Pacific
Importance: High

Jay / Meredith:

Pursuant to section 3.1 (1) of the agreement for regulation services between Powerex and NorthWestern Corporation, NorthWestern is giving notice via email and facsimile that the total amount of regulation to be provided by Powerex to Northwestern to be brought to 0 MW beginning at Hour Ending (HE)0100 Pacific May 1, 2012. Please consider this the required notice outlined in the agreement. We will also fax this notice to 604-891-5025, attn: Jay Ratzlaff.

Please confirm receipt this notice.

Thanks for all your help.

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Friday, March 30, 2012 8:59 AM
To: McGowan, Michael; Ratzlaff, Jay
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McLain, Andrew
Subject: Re: Regulation Reduction May 1, 2012 at HE0100 Pacific

Mike,

Thank you. We received your notice and will reduce the quantity to 0 for the balance of the term.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Friday, March 30, 2012 07:56 AM
To: Ratzlaff, Jay; Aitken, Meredith
Cc: Johnston, Casey E <Casey.Johnston@northwestern.com>; CASHELL, MICHAEL R <MICHAEL.CASHELL@northwestern.com>; Brugger, Richard A (Rich) <Rich.BRUGGER@northwestern.com>; McGowan, Michael <Michael.McGowan@northwestern.com>; McLain, Andrew <Andrew.Mclain@northwestern.com>
Subject: Regulation Reduction May 1, 2012 at HE0100 Pacific

Jay / Meredith:

Pursuant to section 3.1 (1) of the agreement for regulation services between Powerex and NorthWestern Corporation, NorthWestern is giving notice via email and facsimile that the total amount of regulation to be provided by Powerex to Northwestern to be brought to 0 MW beginning at Hour Ending (HE)0100 Pacific May 1, 2012. Please consider this the required notice outlined in the agreement. We will also fax this notice to 604-891-5025, attn: Jay Ratzlaff.

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Moran, Connie C

From: Humphreys, Scott [Scott.Humphreys@powerex.com]
Sent: Friday, March 30, 2012 9:07 AM
To: McGowan, Michael
Subject: RE: Regulation Reduction May 1, 2012 at HE0100 Pacific

Hi Michael,

Thank you for copying me. I will distribute as appropriate within Powerex.

Have a good weekend.

Scott.

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Friday, March 30, 2012 7:58 AM
To: Humphreys, Scott
Cc: McGowan, Michael
Subject: FW: Regulation Reduction May 1, 2012 at HE0100 Pacific
Importance: High

Scott, I wanted to provide you with the notice below, as I received an email that Meredith Aitken is currently out of the office.

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To: 'jay.ratzlaff@powerex.com'; 'Aitken, Meredith'
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael; McLain, Andrew
Subject: Regulation Reduction May 1, 2012 at HE0100 Pacific
Importance: High

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Moran, Connie C

From: McGowan, Michael
Sent: Wednesday, February 01, 2012 11:19 AM
To: 'Aitken, Meredith'
Cc: Johnston, Casey E
Subject: RE: NWMT RFP Redline

Meredith, I am anticipating 50 MW, but I am trying to get to a total of 93 MW, so I am looking at our options to get to that level. So in short, yes we would like a higher potential maximum if you can make it available.

Thanks,

Mike McGowan

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Wednesday, February 01, 2012 9:59 AM
To: McGowan, Michael
Cc: Johnston, Casey E
Subject: RE: NWMT RFP Redline

Mike,

Thank you for providing the draft. We will review it right away. With respect to quantity, is it safe to say you expect ~50 MW or might is there a higher potential max? I want to make sure we plan appropriately.

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 01, 2012 8:54 AM
To: Aitken, Meredith
Cc: Johnston, Casey E; McGowan, Michael
Subject: NWMT RFP Redline
Importance: High

Meredith,

Attached is the DRAFT of the agreement for Regulation as we discussed. Some talking points we would like to discuss is of course the MW amount you can offer, along with a discussion on the Term. I am still piecing together the amounts we are going to ultimately need, so we will need to have a further discussion on that. In the redline we have the service through April 2012, with extensions through Jan. 31, 2013 if needed. We have addressed increasing capacity in the contract, but will also need to have a discussion with PowerEx about decreasing the amount needed (ramp down) over time.

Please review and I we can talk some more about this later today. We would like to try to get filings, etc. done as soon as today or tomorrow if it is a possibility.

Again thank you for your help on this and elevating its importance.

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Moran, Connie C

From: McGowan, Michael
Sent: Friday, February 03, 2012 10:38 AM
To: 'Aitken, Meredith'
Cc: Johnston, Casey E
Subject: Errata Filing

Meredith, was PowerEx able to do the Errata filing today for the February regulation agreement? Could you send us those filing documents for our records when you have them?

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Moran, Connie C

From: Johnston, Casey E
Sent: Friday, March 30, 2012 3:06 PM
To: McGowan, Michael
Cc: Powers, Patrick; CASHELL, MICHAEL R
Subject: RE: DGGS for April 1

Thanks Mike!

From: McGowan, Michael
Sent: Friday, March 30, 2012 3:05 PM
To: Johnston, Casey E
Cc: Powers, Patrick; CASHELL, MICHAEL R
Subject: DGGS for April 1

Casey, I did have a discussion with Jim Williams this morning, and my understanding is that there are 2 turbines available at DGGS (but currently capped) with approximately 50 MW of capacity available. Plant personel were working to get the 2 other turnbines operational to provide availability of 2 generators (100 MW) by April 1. My understanding is the last 2 turbines are in transit.

If I understood everything correctly, we should have 50 MW available from DGGS worse case (we originally were planning on 54). This would leave us with 24 MW from PowerEx, 15 MW from Avista, 50 MW from DGGS, and 5 MW from BPA for a total of 94 MW of regulation. Without BPA we are at 89 MW of regulation.

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
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Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Moran, Connie C

From: McGowan, Michael
Sent: Wednesday, February 29, 2012 10:57 AM
To: CASHELL, MICHAEL R
Cc: Johnston, Casey E
Subject: FW: Regulation Reduction March 1, 2012 at HE0100 Pacific

Fyi.

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Wednesday, February 29, 2012 10:49 AM
To: McGowan, Michael
Cc: Johnston, Casey E; Powers, Patrick; Cook, Laura Lynn; Brugger, Richard A (Rich)
Subject: RE: Regulation Reduction March 1, 2012 at HE0100 Pacific

Mike,

Thank you for the email. We confirm that the regulation quantity will reduce to 50 MW for March 1 HE0100 PPT and the corresponding balancing energy will be 25 MW.

Best regards,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 29, 2012 6:59 AM
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Subject: Regulation Reduction March 1, 2012 at HE0100 Pacific
Importance: High

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- PWX has reduced the amount of transmission needed to the 50 MW for HE0100 Pacific on March 1, 2012 and beyond.
- The counter schedule will be reduced to 25 MW for HE0100 Pacific on March 1, 2012 and beyond.

We just wanted to make sure everything is looking good and we are all on the same page for timing.

Let us know when you can Meredith.

Thanks,

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Butte, MT 59701
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Moran, Connie C

From: Johnston, Casey E
Sent: Wednesday, February 29, 2012 10:53 AM
To: McGowan, Michael
Cc: Powers, Patrick; Cook, Laura Lynn; Brugger, Richard A (Rich); CASHELL, MICHAEL R
Subject: RE: Regulation Reduction March 1, 2012 at HE0100 Pacific

Thanks for closing the loop Mike,
Casey

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Wednesday, February 29, 2012 10:49 AM
To: McGowan, Michael
Cc: Johnston, Casey E; Powers, Patrick; Cook, Laura Lynn; Brugger, Richard A (Rich)
Subject: RE: Regulation Reduction March 1, 2012 at HE0100 Pacific

Mike,

Thank you for the email. We confirm that the regulation quantity will reduce to 50 MW for March 1 HE0100 PPT and the corresponding balancing energy will be 25 MW.

Best regards,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, February 29, 2012 6:59 AM
To: Aitken, Meredith
Cc: Johnston, Casey E; Powers, Patrick; Cook, Laura Lynn; Brugger, Richard A (Rich)
Subject: Regulation Reduction March 1, 2012 at HE0100 Pacific
Importance: High

Meredith,

How are you? NorthWestern wanted to confirm with you that the Regulation being provided by PowerEx will be changing as follows:

- At Hour Ending (HE)0100 Pacific on March 1, 2012, regulation provided will reduce to 50 MW.
- PWX has reduced the amount of transmission needed to the 50 MW for HE0100 Pacific on March 1, 2012 and beyond.
- The counter schedule will be reduced to 25 MW for HE0100 Pacific on March 1, 2012 and beyond.

We just wanted to make sure everything is looking good and we are all on the same page for timing.

Let us know when you can Meredith.

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy

40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

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Moran, Connie C

From: CASHELL, MICHAEL R
Sent: Thursday, March 15, 2012 11:25 AM
To: Johnston, Casey E
Cc: McGowan, Michael
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

This is good work. Thank you.

Mike Cashell
Vice President - Transmission
NorthWestern Energy
W (406) 497-4575
C (406) 490-4011
Michael.Cashell@northwestern.com

Executive Assistant
Gayle Hunt
406-497-3247
Gayle.Hunt@northwestern.com

-----Original Message-----
From: Johnston, Casey E
Sent: Thursday, March 15, 2012 11:10 AM Mountain Standard Time
To: CASHELL, MICHAEL R
Cc: McGowan, Michael
Subject: FW: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

FYI

From: McGowan, Michael
Sent: Thursday, March 15, 2012 11:09 AM
To: 'Aitken, Meredith'
Cc: Johnston, Casey E
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Thanks Meredith, appreciate all the work you have done on this.

Mike McGowan

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Thursday, March 15, 2012 10:32 AM
To: McGowan, Michael
Cc: Johnston, Casey E
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Mike, yes, we can work to do that to help keep costs down. We will arrange for 10 MW for the month now and then supplement it with 14 MW weekly when that window opens.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Thursday, March 15, 2012 8:07 AM
To: Aitken, Meredith
Cc: Johnston, Casey E
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Meredith, just a question, but is it possible to purchase Transmission in the shorter term for the increments of the regulation provided to help keep costs down? If that is not the case NorthWestern I can send you an email with agreement.

From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Thursday, March 15, 2012 8:57 AM
To: McGowan, Michael
Subject: RE: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific

Mike,

Can you also please acknowledge that NorthWestern agrees to pay for 24 MW transmission for the month?

Thanks,
Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Wednesday, March 14, 2012 3:05 PM
To: Aitken, Meredith
Cc: Johnston, Casey E; CASHELL, MICHAEL R; Brugger, Richard A (Rich); McGowan, Michael
Subject: Regulation Reduction April 1 and April 15, 2012 at HE0100 Pacific
Importance: High

Meredith,

NorthWestern would like to provide notice to PowerEx to reduce the regulation service provided to NorthWestern by the following:

- At Hour Ending (HE) 0100 Pacific on April 1, 2012, regulation will be reduced from 50 MW to 24 MW (counter schedule will be adjusted to 12 MW)
- At Hour Ending (HE) 0100 Pacific on April 15, 2012, regulation will be reduced from 24 MW to 10 MW (counter schedule will be adjusted to 5 MW)

Please confirm these changes when you can.

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701

w: (406) 497-4184
c: (406) 533-8000

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Moran, Connie C

From: O'Connor, Frank
Sent: Monday, January 23, 2012 4:02 PM
To: 'Jon Ogur'
Cc: Johnston, Casey E; McGowan, Michael
Subject: Regulation RFP Question

Jon

Can you verify with PowerEx that NorthWestern is able to take a portion of the MW in the 3 tiers offered. For example, would NorthWestern be able to procure 70 MW of regulation from PowerEx with the Tier structures they propose? We are interpreting that we are able to this by taking 30 MW from Tier 1, 30 MW from Tier 2, and 10 out of the 45 MW offered in Tier 3.

Or is it PowerEx's intent that we can only buy in the full Tier blocks, meaning NorthWestern could only purchase 30 MW, an additional 30 MW, and then an additional 45 MW?

Let me know if you have any questions. We are diligently working through the proposals and if you can get a quick response from Powerex that will allow us to move forward.

Thanks,
Frank

Frank O'Connor
Electric Transmission Specialist

40 E. Broadway
Butte, MT 59701
Office: (406) 497-3126
Fax: (406) 497-2054
E-mail: frank.o'connor@northwestern.com
www.northwesternenergy.com

NorthWestern Energy

Moran, Connie C

From: O'Connor, Frank
Sent: Tuesday, January 24, 2012 7:42 AM
To: Johnston, Casey E; McGowan, Michael
Subject: FW: Regulation RFP Question

FYI

Thanks,
Frank

Frank O'Connor
Electric Transmission Specialist
NorthWestern Energy
(406) 497-3126

From: Jon Ogur [mailto:ogur@bwmq.com]
Sent: Tuesday, January 24, 2012 7:40 AM
To: O'Connor, Frank
Subject: RE: Regulation RFP Question

Frank,

I've forwarded the questions to Meredith Aitken at Powerex.

Glad to hear the work is going well. I've started drafting the report. As in previous RFPs, it's structured as an affidavit to FERC. When you've finished your work, I'll need some input from you for my discussion of the evluation procedure, including how price and the non-price factors were used in the evaluation.

Jon

Jonathan Ogur, Associate
Brown, Williams, Moorhead & Quinn, Inc.
1155 15th Street N.W., Suite 400
Washington, DC 20005
(202) 775-8994
fax (202) 223-9159
www.bwmq.com

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From: O'Connor, Frank [Frank.O'Connor@northwestern.com]
Sent: Monday, January 23, 2012 6:01 PM
To: Jon Ogur

Cc: Johnston, Casey E; McGowan, Michael
Subject: Regulation RFP Question

Jon

Can you verify with PowerEx that NorthWestern is able to take a portion of the MW in the 3 tiers offered. For example, would NorthWestern be able to procure 70 MW of regulation from PowerEx with the Tier structures they propose? We are interpreting that we are able to this by taking 30 MW from Tier 1, 30 MW from Tier 2, and 10 out of the 45 MW offered in Tier 3.

Or is it PowerEx's intent that we can only buy in the full Tier blocks, meaning NorthWestern could only purchase 30 MW, an additional 30 MW, and then an additional 45 MW?

Let me know if you have any questions. We are diligently working through the proposals and if you can get a quick response from Powerex that will allow us to move forward.

Thanks,
Frank

Frank O'Connor
Electric Transmission Specialist

40 E. Broadway
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Stauffer, Roberta (Bobbi)

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, February 02, 2012 1:50 PM
To: McGowan, Michael
Subject: FW: Northwestern - Feb sale
Attachments: BL Pwx-NorthwesternRegulating Feb 2012 v2-vs v7.doc; Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v7.docx

Mike,

Here is the draft version. There is a placeholder to insert recovering transmission tariff. I will supply that momentarily but please review this in the interim.

Thanks,
Meredith

From: Ratzlaff, Jay
Sent: Thursday, February 02, 2012 12:48 PM
To: Aitken, Meredith
Subject: RE: Northwestern - Feb sale

For NorthWestern

Jay Ratzlaff
Corporate Counsel and Manager, Contracts

Powerex Corp.
Direct: 604 895 7067

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From: Aitken, Meredith

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AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this ~~5th~~2nd day of ~~September, 2008~~February, 2012 and effective ~~January 1, 2009~~February 3, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"~~BCTC~~BCHA"** means the British Columbia ~~Transmission Corporation~~Hydro and Power Authority.

1.4 **"~~BCTC~~BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such

petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section ~~7.4~~.7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section ~~7.4~~.7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 "**Letter of Credit Default**" means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 "**Moody's**" shall mean Moody's Investors Service, Inc. or its successor.

1.21 "**NWE Transmission Path**" means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 "**Off-Peak**" means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 "**On-Peak**" means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 "**Outage Management Protocol**" means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 "**Performance Assurance**" shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "**PPT**" means Pacific Prevailing Time.

1.27 "**Preschedule Day**" shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s)

~~1.28 "Q1" means January through March; "Q2" means April through June; "Q3" means July through September; and "Q4" means October through December.~~

1.28 ~~1.29~~ "**Qualified Institution**" means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 ~~1.30~~ "**Regulating Reserve Capacity**" means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 ~~1.31~~ "**Regulating Reserve Energy**" means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 ~~1.32~~ **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 ~~1.33~~ **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 ~~1.34~~ **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 ~~1.35~~ **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 ~~1.36~~ **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 ~~1.37~~ **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 ~~1.38~~ **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT ~~January 1, 2009~~February 3, 2012 through HE ~~12~~24 PPT ~~January 6, 2011 (the "Term"). The Parties may mutually agree to extend the Term of this Agreement however, in no event shall the Term extend past January 31, 2012. In the event the Parties extend the Term all other terms and conditions of the Agreement shall remain the same~~February 29, 2012 (the "Term").

2.2 **Approvals.** ~~Powerex and NWE will jointly file this Agreement with the FERC in accordance with Section 205 of the Federal Power Act.~~ The obligations of the Parties for payment for service under this ~~agreement~~Agreement, as set forth in subsection 3.1(4) are conditional upon FERC's ~~acceptance for filing or approval without change of the terms and conditions herein~~granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not ~~approve of~~grant this ~~Agreement or approves it on~~requested waiver or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, ~~the Parties' obligations hereunder shall terminate effective as of the date of the FERC order disapproving or conditionally approving this Agreement. In the event such 205~~Powerex shall nevertheless provide services to NWE, but shall impose no rate for such services, as set forth in subsection 3.1(4), below. In the event such FERC filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of

this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration. Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party~~, a third party~~ or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review ~~originally~~ set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power ~~Comm'n~~Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) ~~(the "*Mobile-Sierra*" doctrine), and as~~, affirmed ~~in~~by *Morgan Stanley Capital Group, Inc. v. Public Utility ~~Dist.~~District No. 1 of Snohomish County, ~~et al.,~~ 554 U.S. (June 26, 128 S. Ct. 2733 (2008).~~ and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

	Regulating Reserve Capacity	Time Period
~~(i)~~	40~~70~~ MW	HE 01 PPT ~~January 1, 2009~~February 3, 2012 through HE ~~11~~24 PPT ~~April 30, 2009~~February 29, 2012
~~(ii)~~	~~50 MW~~	~~HE 12 PPT April 30, 2009 through HE 11 PPT July 15, 2009~~
~~(iii)~~	~~40 MW~~	~~HE 12 PPT July 15, 2009 to HE 11 PPT April 30, 2010~~
~~(iv)~~	~~50 MW~~	~~HE 12 PPT April 30, 2010 through HE 11 PPT July 15, 2010~~

~~(v)~~	~~40 MW~~	~~HE 12 PPT July 15, 2010 to HE 11 PPT January 6, 2011~~

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) ~~BCTC~~BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: ~~The Parties agree that Powerex shall not be obligated to procure, redirect or demonstrate existing transmission rights for the required quantity of firm transmission rights on the BCTC Transmission Path or BPA Transmission Path until such time as FERC approval is obtained and (i) such approval is unconditional or (ii) both Parties have confirmed that they accept the conditions imposed by the FERC in accordance with Section 2.2. Powerex shall, within ten (10) Business Days after the satisfaction of (i) or (ii) above, perform one or a combination of the following actions to secure 40MW of the BCTC Transmission Path and 40MW of the BPA Transmission Path for the period January 1, 2009 through December 31, 2010:~~

~~(a) submit its request to purchase yearly firm transmission capacity,~~
~~(b) submit its request to redirect yearly firm transmission capacity, or~~
~~(c) demonstrate it has existing yearly firm transmission rights that shall be dedicated to meet Powerex's transmission service obligations under this Agreement.~~In the event that ~~40 MW~~the quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. ~~If at any point from the date of FERC approval through December 31, 2010 the BCTC or the BPA Transmission Paths become available the~~The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

~~With respect to the incremental 10 MW of Contracted Capacity for the period May 1through July 15, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path until such time as monthly reservations are allowed on the BCTC and BPA transmission systems. In the event such transmission is unavailable, each of the Parties shall be relieved of its obligations under this Agreement with respect to the incremental 10 MW of Contracted Capacity.~~

~~With respect to the period of January 1, 2011 through January 6, 2011, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path beyond December 31, 2010 until such time as daily reservations are allowed on the BCTC and BPA systems. In the event the required BCTC Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.~~

~~In the event the term of this agreement is extended pursuant to Section 2.1, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path beyond January 6, 2011 until such time as monthly reservations are allowed on the BCTC and BPA systems. In the event the required BCTC Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.~~

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the ~~BCTC~~BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the ~~BCTC~~BCHA and BPA systems. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement ~~the Parties shall be relieved of the obligations under this agreement~~.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth ~~below~~in the following table for providing Regulating Reserve Capacity (the "Capacity Charge"): ~~$8.90/kW-month, plus~~

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the ~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

In the event FERC does not issue an order granting Powerex's requested waiver by the date Powerex is scheduled to invoice NWE under this Agreement, the Parties agree Powerex shall invoice NWE for the total quantity of Regulating Reserve Service Capacity provided at no rate (i.e., $0/kW-month). [insert transmission cost].

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. ~~BCTC~~BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the ~~BCTC~~BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of ~~BCTC~~BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price. As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, Powerex shall charge no rate for providing service under this Agreement (i.e., invoicing at $0/MWh for Regulating Reserve Energy).

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity ~~in accordance with the following table.~~ (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

~~Time of Deliveries~~	~~Quarter~~	~~Next 20 MW of Regulating Reserve Capacity ($/kW month)~~	~~Next 5 MW of Regulating Reserve Capacity ($/kW month)~~	~~Next 15 MW of Regulating Reserve Capacity ($/kW month)~~	~~Next 25 MW of Regulating Reserve Capacity ($/kW month)~~
~~On-Peak~~	~~Q1~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q2~~	~~8.90~~	~~8.90~~	~~10.90~~	~~12.90~~
	~~Q3~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q4~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
~~Off-Peak~~	~~Q1~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~

	~~Q2~~	~~8.90~~	~~8.90~~	~~10.90~~	~~12.90~~
	~~Q3~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q4~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~

~~In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.~~

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the ~~BCTC~~BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or ~~BCTC~~BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or ~~BCTC~~BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in

any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of ~~a month~~the Term, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

~~3.11 Unallocated Transmission Costs.~~

~~(a) In the event that, prior to the commencement of the Term, Powerex has reserved transmission as contemplated in Subsection 3.1(2) and 3.1(3) hereof and following such reservation the commencement of the Term is delayed as provided in Section 2.1 and provided that the delay or termination was outside of the control of Powerex, NWE shall reimburse Powerex for all costs of such transmission, to the extent that such costs are not compensated under Subsection 3.1(3) hereof. Powerex shall take commercially reasonable steps to mitigate any loss.~~

3.11 ~~(b)~~ **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy

("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 Adjustment of Balancing Energy. In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 Balancing Energy Delivery Point. The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 Balancing Energy Price. Powerex shall pay NWE the following for the Balancing Energy:

~~(1) For energy received by Powerex at BPAT and delivered to the BC Hydro system:~~

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; ~~minus~~ and

(ii) the then applicable ~~BCTC~~BCHA hourly PTP rate plus ancillary services plus losses.

~~(2) For energy received by Powerex at BPAT and delivered to a point other than the BC Hydro system~~

~~The Index Rate applicable to such hour minus (the then applicable BPA PTP rates plus ancillary services plus losses).~~

~~(3) For energy received by Powerex on the NWE integrated transmission system:~~

~~The Index Rate applicable to such hour.~~
As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, NWE shall charge no rate for Balancing Energy under this Agreement (i.e., invoicing at $0/MWh for Balancing Energy). [insert transmission cost recovery]

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by ~~BCTC~~BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice~~;~~. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex ~~each month~~hereunder, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of ~~0.94 Cdn~~1.00 CAD$: ~~1.01~~1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 ~~or 7.4~~ hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information,

including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 Credit Provisions

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section ~~7.4~~7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section ~~7.4~~7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section ~~7.4~~7.3(1) and not section ~~7.4~~7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial

statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy
Credit Manager

600 Market St. W
Huron, SD 57350
Phone 605.353.7517
Fax 605.353.7569

NorthWestern Energy
Director, SOCC Operations and
Transmission ~~Marketing~~Services
40 E. Broadway
Butte, MT, 59701
Phone ~~406.497.4575~~406.497.4104
Fax ~~406.497.2054~~406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 No Third Party Beneficiary. This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 Authority. Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 Integration. This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: ~~President & CEO~~ _____	Title:

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to ~~BCTC~~BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

~~BCTC~~BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both ~~BCTC~~BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), ~~BCTC~~BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, ~~BCTC~~BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from ~~BCTC~~BCHA to NWE. The resultant Delivery signal would result in ~~BCTC~~BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

~~BCTC~~BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

~~BCTC~~BCHA Transmission Services Rates:

Description of Service	**~~BCTC~~BCHA Posted Rate as of Execution Date**	**~~BCTC~~BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$~~4.0093~~.912/~~kWmonth~~kW-month	US$~~3.7683~~.912/~~kWmonth~~ kW-month
Scheduling, System Control and Dispatch Service	Cdn$~~0.1060~~.0956/~~MW~~kW-month	US$~~0.1.000~~.0956/~~MW~~kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$~~0.8250~~.602/~~MW~~kW-month	US$~~0.7760~~.602/~~MW~~kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$~~0.004~~0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	~~Quarter~~Day(s) ~~(Q1, Q2, Q3 or Q4)~~	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Thursday, February 02, 2012 12:44:45 PM

Input:	
Document 1 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v2.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v2
Document 2 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v7.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v7
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	99
Deletions	186
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	289

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 2nd day of February, 2012 and effective February 3, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "**Collateral Threshold**" has the meaning set forth in Section 7.3.

1.11 "**Contracted Capacity**" has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "**PPT**" means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012 (the "Term").

2.2 **Approvals.** The obligations of the Parties for payment for service under this Agreement, as set forth in subsection 3.1(4) are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall nevertheless provide services to NWE, but shall impose no rate for such services, as set forth in subsection 3.1(4), below. In the event such FERC filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.
Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public*

Utility Commission, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
70 MW	HE 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that the quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be

made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

In the event FERC does not issue an order granting Powerex's requested waiver by the date Powerex is scheduled to invoice NWE under this Agreement, the Parties agree Powerex shall invoice NWE for the total quantity of Regulating Reserve Service Capacity provided at no rate (i.e., $0/kW-month). [insert transmission cost].

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price. As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, Powerex shall charge no

rate for providing service under this Agreement (i.e., invoicing at $0/MWh for Regulating Reserve Energy).

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission

systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of the Term, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of

Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 Adjustment of Balancing Energy. In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 Balancing Energy Delivery Point. The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 Balancing Energy Price. Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, NWE shall charge no rate for Balancing Energy under this Agreement (i.e., invoicing at $0/MWh for Balancing Energy). [insert transmission cost recovery]

4.5 Failure to Deliver Balancing Energy. For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex hereunder, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as

practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.**EXHIBIT B – TRANSMISSION RATES**

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth

Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Day(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, February 02, 2012 2:30 PM
To: McGowan, Michael
Subject: FW: Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v7 (3).docx
Attachments: Blackline Pwx-NorthwesternRegulating Feb 2012 v2-vs v8.doc; Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v8.docx

Here is the version for signature. We are preparing signature copies on our side.

This email may contain information that is confidential. If you are not the intended recipient you may not distribute or copy this email or any attachments. If you have received this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this ~~5th~~2nd day of ~~September, 2008~~February, 2012 and effective ~~January 1, 2009~~February 3, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"~~BCTC~~BCHA"** means the British Columbia ~~Transmission Corporation~~Hydro and Power Authority.

1.4 **"~~BCTC~~BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such

petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section ~~7.4.~~7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section ~~7.4.~~7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 **"PPT"** means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s)

~~1.28 "Q1" means January through March; "Q2" means April through June; "Q3" means July through September; and "Q4" means October through December.~~

1.28 ~~1.29~~ **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 ~~1.30~~ **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 ~~1.31~~ **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 ~~1.32~~ **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 ~~1.33~~ **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 ~~1.34~~ **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 ~~1.35~~ **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 ~~1.36~~ **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 ~~1.37~~ **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 ~~1.38~~ **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT ~~January 1, 2009~~February 3, 2012 through HE ~~12~~24 PPT ~~January 6, 2011 (the "Term"). The Parties may mutually agree to extend the Term of this Agreement however, in no event shall the Term extend past January 31, 2012. In the event the Parties extend the Term all other terms and conditions of the Agreement shall remain the same~~February 29, 2012 (the "Term").

2.2 **Approvals.** ~~Powerex and NWE will jointly file this Agreement with the FERC in accordance with Section 205 of the Federal Power Act.~~ The obligations of the Parties for payment for service under this ~~agreement~~Agreement, as set forth in subsection 3.1(4) are conditional upon FERC's ~~acceptance for filing or approval without change of the terms and conditions herein~~granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not ~~approve of~~grant this ~~Agreement or approves it on~~requested waiver or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, ~~the Parties' obligations hereunder shall terminate effective as of the date of the FERC order disapproving or conditionally approving this Agreement. In the event such 205~~Powerex shall nevertheless provide services to NWE, but shall impose no rate for such services, as set forth in subsection 3.1(4), below. In the event such FERC filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of

this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration. Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party~~, a third party~~ or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review ~~originally~~ set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power ~~Comm'n~~Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) ~~(the "Mobile-Sierra" doctrine), and as~~, affirmed ~~in~~by *Morgan Stanley Capital Group, Inc. v. Public Utility ~~Dist.~~District No. 1 of Snohomish County, ~~et al.~~*, ~~554 U.S. (June 26,~~ 128 S. Ct. 2733 (2008). ~~and~~ *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

	Regulating Reserve Capacity	Time Period
~~(i)~~	~~40~~70 MW	HE 01 PPT ~~January 1, 2009~~February 3, 2012 through HE ~~11~~24 PPT ~~April 30, 2009~~February 29, 2012
~~(ii)~~	~~50 MW~~	~~HE 12 PPT April 30, 2009 through HE 11 PPT July 15, 2009~~
~~(iii)~~	~~40 MW~~	~~HE 12 PPT July 15, 2009 to HE 11 PPT April 30, 2010~~
~~(iv)~~	~~50 MW~~	~~HE 12 PPT April 30, 2010 through HE 11 PPT July 15, 2010~~

~~(v)~~	~~40 MW~~	~~HE 12 PPT July 15, 2010 to HE 11 PPT January 6, 2011~~

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) ~~BCTC~~BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: ~~The Parties agree that Powerex shall not be obligated to procure, redirect or demonstrate existing transmission rights for the required quantity of firm transmission rights on the BCTC Transmission Path or BPA Transmission Path until such time as FERC approval is obtained and (i) such approval is unconditional or (ii) both Parties have confirmed that they accept the conditions imposed by the FERC in accordance with Section 2.2. Powerex shall, within ten (10) Business Days after the satisfaction of (i) or (ii) above, perform one or a combination of the following actions to secure 40MW of the BCTC Transmission Path and 40MW of the BPA Transmission Path for the period January 1, 2009 through December 31, 2010:~~

~~(a) submit its request to purchase yearly firm transmission capacity,~~
~~(b) submit its request to redirect yearly firm transmission capacity, or~~
~~(c) demonstrate it has existing yearly firm transmission rights that shall be dedicated to meet Powerex's transmission service obligations under this Agreement.~~In the event that ~~40 MW~~the quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. ~~If at any point from the date of FERC approval through December 31, 2010 the BCTC or the BPA Transmission Paths become available the~~The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

~~With respect to the incremental 10 MW of Contracted Capacity for the period May 1through July 15, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path until such time as monthly reservations are allowed on the BCTC and BPA transmission systems. In the event such transmission is unavailable, each of the Parties shall be relieved of its obligations under this Agreement with respect to the incremental 10 MW of Contracted Capacity.~~

~~With respect to the period of January 1, 2011 through January 6, 2011, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path beyond December 31, 2010 until such time as daily reservations are allowed on the BCTC and BPA systems. In the event the required BCTC Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.~~

~~In the event the term of this agreement is extended pursuant to Section 2.1, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path beyond January 6, 2011 until such time as monthly reservations are allowed on the BCTC and BPA systems. In the event the required BCTC Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.~~

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the ~~BCTC~~BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the ~~BCTC~~BCHA and BPA systems. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement ~~the Parties shall be relieved of the obligations under this agreement~~.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth ~~below~~in the following table for providing Regulating Reserve Capacity (the "Capacity Charge"): ~~$8.90/kWmonth, plus~~

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the ~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

In the event FERC does not issue an order granting Powerex's requested waiver by the date Powerex is scheduled to invoice NWE under this Agreement, the Parties agree Powerex shall invoice NWE for the total quantity of Regulating Reserve Service Capacity provided at no rate (i.e., $0/kW-month).). In such circumstances, Powerex will invoice NWE for costs associated with the transmission service it reserves for the provision of the Regulating Reserve Service Capacity, charging NWE for the applicable service reservations at prices as specified in each third party transmission provider's open access transmission tariff.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. ~~BCTC~~BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the ~~BCTC~~BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of ~~BCTC~~BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price. As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, Powerex shall charge no rate for providing service under this Agreement (i.e., invoicing at $0/MWh for Regulating Reserve Energy).

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity ~~in accordance with the following table.~~ (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

~~Time of Deliveries~~	~~Quarter~~	~~Next 20 MW of Regulating Reserve Capacity ($/kW month)~~	~~Next 5 MW of Regulating Reserve Capacity ($/kW month)~~	~~Next 15 MW of Regulating Reserve Capacity ($/kW month)~~	~~Next 25 MW of Regulating Reserve Capacity ($/kW month)~~
~~On-Peak~~	~~Q1~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q2~~	~~8.90~~	~~8.90~~	~~10.90~~	~~12.90~~

	~~Q3~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q4~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
~~Off Peak~~	~~Q1~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q2~~	~~8.90~~	~~8.90~~	~~10.90~~	~~12.90~~
	~~Q3~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q4~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~

~~In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.~~

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the ~~BCTC~~BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or ~~BCTC~~BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or ~~BCTC~~BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on

such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of ~~a month~~the Term, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

~~3.11 Unallocated Transmission Costs.~~

~~(a) In the event that, prior to the commencement of the Term, Powerex has reserved transmission as contemplated in Subsection 3.1(2) and 3.1(3) hereof and following such reservation the commencement of the Term is delayed as provided in Section 2.1 and provided that the delay or termination was outside of the control of Powerex, NWE shall reimburse Powerex for all costs of such transmission, to the extent that such costs are not compensated under Subsection 3.1(3) hereof. Powerex shall take commercially reasonable steps to mitigate any loss.~~

3.11 ~~(b) Unallocated Transmission Costs.~~ In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties

that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

~~(1) For energy received by Powerex at BPAT and delivered to the BC Hydro system:~~

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; ~~minus~~ and

(ii) the then applicable ~~BCTC~~BCHA hourly PTP rate plus ancillary services plus losses.

~~(2) For energy received by Powerex at BPAT and delivered to a point other than the BC Hydro system~~

~~The Index Rate applicable to such hour minus (the then applicable BPA PTP rates plus ancillary services plus losses).~~

~~(3) For energy received by Powerex on the NWE integrated transmission system:~~

~~The Index Rate applicable to such hour.~~

As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, NWE shall charge no rate for Balancing Energy under this Agreement (i.e., invoicing at $0/MWh for Balancing Energy), however NWE will pay transmission costs as detailed in subsection 3.1(4).

4.5 Failure to Deliver Balancing Energy. For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 Failure to Receive Balancing Energy. For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 Scheduling of Balancing Energy. Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 Energy Accounting. For purposes of energy accounting and settlements between the Parties, the readings generated by ~~BCTC~~BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the

determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice~~,~~. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex ~~each month~~hereunder, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of ~~0.94 Cdn~~1.00 CAD$: ~~1.01~~1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 ~~or 7.4~~ hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the

termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 Credit Provisions

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section ~~7.4~~7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section ~~7.4~~7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section ~~7.4~~7.3(1) and not section ~~7.4~~7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the

statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of

the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy
Credit Manager

600 Market St. W
Huron, SD 57350
Phone 605.353.7517
Fax 605.353.7569

NorthWestern Energy
Director, SOCC Operations and Transmission ~~Marketing~~Services
40 E. Broadway
Butte, MT, 59701
Phone ~~406.497.4575~~406.497.4104
Fax ~~406.497.2054~~406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the

individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 No Third Party Beneficiary. This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 Authority. Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 Integration. This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: ~~President & CEO~~ _____	Title:

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to ~~BCTC~~BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

~~BCTC~~BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both ~~BCTC~~BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), ~~BCTC~~BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, ~~BCTC~~BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from ~~BCTC~~BCHA to NWE. The resultant Delivery signal would result in ~~BCTC~~BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

~~BCTC~~BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

~~BCTC~~BCHA Transmission Services Rates:

Description of Service	**~~BCTC~~BCHA Posted Rate as of Execution Date**	**~~BCTC~~BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$~~4.0093~~.912/~~kWmonth~~kW-month	US$~~3.7683~~.912/~~kWmonth~~ kW-month
Scheduling, System Control and Dispatch Service	Cdn$~~0.1060~~.0956/~~MW~~kW-month	US$~~0.1.000~~.0956/~~MW~~kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$~~0.8250~~.602/~~MW~~kW-month	US$~~0.7760~~.602/~~MW~~kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$~~0.00~~0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	~~Quarter~~Day(s) ~~(Q1, Q2, Q3 or Q4)~~	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Thursday, February 02, 2012 1:21:09 PM

Input:	
Document 1 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v2.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v2
Document 2 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v8.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v8
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	99
Deletions	186
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	289

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 2nd day of February, 2012 and effective February 3, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "**Collateral Threshold**" has the meaning set forth in Section 7.3.

1.11 "**Contracted Capacity**" has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "PPT" means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012 (the "Term").

2.2 **Approvals.** The obligations of the Parties for payment for service under this Agreement, as set forth in subsection 3.1(4) are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall nevertheless provide services to NWE, but shall impose no rate for such services, as set forth in subsection 3.1(4), below. In the event such FERC filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.
Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public*

Utility Commission, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
70 MW	HE 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that the quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be

made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

In the event FERC does not issue an order granting Powerex's requested waiver by the date Powerex is scheduled to invoice NWE under this Agreement, the Parties agree Powerex shall invoice NWE for the total quantity of Regulating Reserve Service Capacity provided at no rate (i.e., $0/kW-month).). In such circumstances, Powerex will invoice NWE for costs associated with the transmission service it reserves for the provision of the Regulating Reserve Service Capacity, charging NWE for the applicable service reservations at prices as specified in each third party transmission provider's open access transmission tariff.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price. As discussed in

subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No: 1 from FERC by the date Powerex is to invoice NWE, Powerex shall charge no rate for providing service under this Agreement (i.e., invoicing at $0/MWh for Regulating Reserve Energy).

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to

NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of the Term, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the

parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, NWE shall charge no rate for Balancing Energy under this Agreement (i.e., invoicing at $0/MWh for Balancing Energy), however NWE will pay transmission costs as detailed in subsection 3.1(4).

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this

Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex hereunder, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 _ S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB

$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8

Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.**EXHIBIT B – TRANSMISSION RATES**

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth

Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Day(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Thursday, February 02, 2012 5:38 PM
To: McGowan, Michael
Subject: Emailing: Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v8
Attachments: Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v8.docx

Mike,

Attached is the latest version of the March 1 2012 - Jan 8, 2013 agreement for your review. Section 3.1 has the terms for reducing the quantity.

Best regards,
Meredith

This email may contain information that is confidential. If you are not the intended recipient you may not distribute or copy this email or any attachments. If you have received this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.
-PowerexDisclaimerID5.2.8.1541

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 3 day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section 7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "**PPT**" means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** Powerex and NWE will jointly file this Agreement with the FERC in accordance with Section 205 of the Federal Power Act. The obligations of the Parties for service under this agreement are conditional upon FERC's acceptance for filing or approval without change of the terms and conditions herein. In the event that FERC does not approve of this Agreement or approves it on conditions that are unacceptable to either Party in its sole discretion, the Parties' obligations hereunder shall terminate effective as of the date of the FERC order disapproving or conditionally approving this Agreement. In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public*

Utility Commission, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
70 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3). NWE shall have the option to reduce the Regulating Reserve Capacity quantity for: (i) March 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only.

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

In the event the term of this agreement is extended pursuant to Section 2.1, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012

until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such

quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided

hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice,. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090

Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: _____

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.**EXHIBIT B – TRANSMISSION RATES**

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth

Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Friday, February 03, 2012 10:40 AM
To: McGowan, Michael
Subject: FW: FERC Receipt of Filing of Powerex Errata to Request for Waiver in ER12-984-000
Attachments: PWX Waiver Request Errata.pdf

Mike, here is the errata filing.

-----Original Message-----
From: Bradley, Tracey [mailto:Tracey.Bradley@bgllp.com]
Sent: Friday, February 03, 2012 9:04 AM
To: Aitken, Meredith; MacDougall, Mike; McDonald, Karen; Irving, John K.; Lam, Jeff; Ratzlaff, Jay
Cc: Fox, Paul; King, Deanna; Davis, Tracy; Pierson, Joy
Subject: FW: FERC Receipt of Filing of Powerex Errata to Request for Waiver in ER12-984-000

Attached is a copy of the errata filing. I will forward the acceptance for filing email when it arrives.

-----Original Message-----
From: eFiling@ferc.gov [mailto:eFiling@ferc.gov]
Sent: Friday, February 03, 2012 11:59 AM
To: Bradley, Tracey; eFiling@ferc.gov
Subject: FERC Receipt of Filing in ER12-984-000

Confirmation of Receipt

This is to confirm receipt by the FERC Office of the Secretary of the following electronic submission:

-Submission ID: 340742
-Docket(s) No.: ER12-984-000
-Filed By: Powerex Corp.
-Signed By: Deanna King
-Filing Desc: Motion to File Errata to the Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment under ER12-984-000.
-Submission Date/Time: 2/3/2012 11:55:27 AM -Filed Date: 2/3/2012 11:55:27 AM

Additional detail about your filing is available via the following link:

https://ferconline.ferc.gov/SubmissionStatus.aspx?hashcode=ZJLDA4oIh7gOKIjHDDIdg

You will receive an email, shortly, concerning the status of your submission.

Thank you for participating in the FERC Electronic Filing System. If you have any questions, or if you detect errors in your submission or the FERC-generated PDF, please contact FERC at:

E-Mail: efiling@ferc.gov mailto:efiling@ferc.gov (do not send filings to this address) Voice Mail: 202-502-8258.

This email may contain information that is confidential. If you are not the intended recipient you may not distribute or copy this email or any attachments. If you have received

this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.
-PowerexDisclaimerID5.2.8.1541

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&GIULIANI

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February 3, 2012

Via Electronic Filing

Ms. Kimberly D. Bose
Secretary of the Commission
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Powerex Corp., Docket No. ER12-984-000

Dear Ms. Bose:

Please find enclosed Powerex's Motion to File Errata to the Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment ("Waiver Request") filed in the above-referenced proceeding on February 2, 2012. With this motion, Powerex is submitting a clean and redlined version of the corrected Waiver Request.

Please do not hesitate to contact me regarding this filing.

Very truly yours,

Bracewell & Giuliani LLP

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#3976001.01

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Powerex Corp.	Docket No. ER12-984-000

MOTION OF POWEREX CORP. TO FILE ERRATA

Pursuant to Rule 212 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2011), Powerex Corp. ("Powerex") hereby moves to file this errata to the Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment ("Waiver Request").

On February 2, 2012, Powerex filed the above-referenced Waiver Request. It has come to Powerex's attention that certain errors are contained in the Waiver Request, including missing attachments, which require correction. With this motion, Powerex is submitting a clean and redlined version of the corrected Waiver Request.

Powerex respectfully requests that this motion be granted.

Respectfully submitted,

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February 3, 2012

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February 2, 2012

CORRECTED VERSION

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Powerex Corp.*, Docket No. ER12-___-000

Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d (2006), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2011), Powerex Corp. ("Powerex") hereby respectfully requests a limited waiver of Section 1 of its market-based rate schedule ("FERC Rate Schedule No. 1") in order to provide NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern"), with up to 70 MW of Regulating Reserve Service on an interim basis under an Agreement dated February 2, 2012.[1] Powerex further requests that this waiver be made retroactive to February 3, 2012, the date Powerex is scheduled to commence service at NorthWestern's request.

This request for waiver is being made on an emergency basis, and Powerex seeks immediate and expedited Commission action because of NorthWestern's demonstrated pressing need to obtain Regulating Reserve Service in order to provide the service it is required to offer under Schedule 3 – Regulation and Frequency Response Service of its Open Access Transmission Tariff ("OATT"). Because Powerex has previously provided

[1] A copy of the February 2, 2012 Agreement is attached as Appendix A.

substantially the same service to NorthWestern in 2008 and 2009,[2] the parties negotiated and executed an interim balance-of-the-month ("BOM") agreement that would immediately supply NorthWestern with the needed service as soon as it was technically feasible. Service is scheduled to begin February 3, 2012 and under the terms of the Agreement, will last until February 29, 2012.

Section 1 of Powerex's FERC Rate Schedule No. 1 permits Powerex to provide ancillary services based on bilateral negotiations with counterparties, but provides that Powerex shall not make market-based rate sales of ancillary services to a public utility that is purchasing those services to satisfy its OATT requirements to offer ancillary services to its own customers.[3] As explained below, good cause exists for the Commission to grant a limited and retroactive waiver of this provision to authorize Powerex to make market-based sales to NorthWestern under this Agreement.

The BOM Agreement does not raise any market power concerns. This BOM Agreement is identical in structure to the agreement for which the Commission has twice waived Powerex's Section 1 restriction.[4] The proposed price for the services Powerex is to provide under this BOM Agreement is at a lower rate than that of the prior agreement. And further, the BOM Agreement specifically provides that its market-based pricing will take effect only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex will charge NorthWestern no rate ($0) for the capacity or energy services provided, and it will charge NorthWestern only for related transmission based on prices in place by the relevant transmission providers. Thus, there can be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Concurrent with this filing, Powerex and NorthWestern are presently negotiating a subsequent Regulating Reserve Service agreement that would be effective March 1, 2012 through January 8, 2013 under which the quantity may be reduced at NorthWestern's discretion on a month to month basis.. Powerex will seek prior Commission authorization to make such sales. However, given the exigent circumstances and NorthWestern's urgent need for service, Powerex respectfully asks the Commission to approve the instant waiver request on the BOM Agreement retroactively, effective on the date service commenced, February 3, 2012.

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[2] *See NorthWestern and Powerex Corp.*, 121 FERC ¶ 61,204 (2007) ("November 28, 2007 Order"); *Powerex Corp. and NorthWestern Corp.*, 125 FERC ¶ 61,179 (2008) ("November 14, 2008 Order").

[3] *See* Powerex Corp., FERC Rate Schedule No. 1, at Section 1 (effective Sept. 30, 2010) (unpublished Letter Order issued Feb. 14, 2011 in Docket No. ER11-2664-000).

[4] *See* November 28, 2007 Order and November 14, 2008 Order.

Powerex respectfully requests an emergency and expedited order granting the requested and limited waiver, with Commission action as soon as feasibly possible.

I.
CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications in this proceeding should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

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III.
BACKGROUND

A. Description of Parties to the Agreement

1. Description of Powerex

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign Sovereign Immunities Act.[5] Powerex sells power at wholesale in the United States from

[5] 28 U.S.C. §§ 1602, *et seq.*

a portfolio of resources, including capability from BC Hydro system resources, the Canadian Entitlement made available under the Columbia River Treaty, and power acquired from other sellers within the United States and Canada.

Powerex makes wholesale sales in the United States pursuant to market-based rate authority originally granted by the Commission in 1997 and most recently reaffirmed by letter order dated July 26, 2007.[6] In its most recent order approving Powerex's continued authority to sell at market-based rates, the Commission reaffirmed that Powerex continues to lack generation market power in its relevant destination markets, as well as to lack transmission market power and any ability to erect barriers to entry. Powerex has qualified as a Category 1 seller under the Commission's regulations.[7]

Under Section 1 of Powerex's FERC Rate Schedule No. 1, Powerex is authorized to make sales of ancillary services at market-based rates within certain organized markets and also bilaterally, subject to certain conditions imposed upon sellers by the Commission in Order No. 697.[8]

2. Description of NorthWestern

As noted in prior filings with the Commission, NorthWestern owns and operates transmission and distribution facilities in Montana under which it serves customers in the western two-thirds of the state. NorthWestern provides regulated transmission service under its OATT. On January 1, 2011, NorthWestern and its wholly owned subsidiary commenced commercial operation of the Mill Creek Generating Station, now known as the Dave Gates Generating Station ("DGGS"), a 150-MW natural gas-fired generating station near Anaconda, MT.[9] DGGS is used to provide regulation and

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[6] *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, Letter Order issued in Docket No. ER97-4024-012 (Sept. 12, 2000); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-002 (Oct. 30, 2003); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-007 (July 26, 2007).

[7] *See Powerex Corp.*, Letter Order issued in Docket No. ER01-48-018 (Oct. 29, 2010).

[8] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,252 at PP 1058-62, *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,268, *order on clarification*, Order No. 697-B, 124 FERC ¶ 61,055 (2008) (modifying its 1999 ruling in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,163).

[9] Previously, NorthWestern had been relying on contracts with third parties to provide ancillary services in order to maintain its system reliability in accordance with various Commission and North American Electric Reliability Council ("NERC") requirements, as well as to provide the ancillary services required under its OATT. To fulfill these obligations,

frequency response service to NorthWestern's transmission customers, as required in Schedule 3 of the NorthWestern OATT.

B. Previous Powerex-NorthWestern Agreements for Regulating Reserve Services

1. The 2008 Reserves Agreement

In 2007, the Commission accepted an agreement between Powerex and NorthWestern under which Powerex would provide Regulating Reserve Service to NorthWestern from January 1, 2008 through December 31, 2008 ("2008 Reserves Agreement").[10] Under this agreement, Powerex was obligated to provide 50 MW of Regulating Reserve Capacity for twelve months at a price of $9.40/kW-month and to provide an additional 10 MW for the period May 1, 2008 to July 15, 2008 at a price of $14.00/kw-month, plus a fixed fee for firm transmission service between the British Columbia and NorthWestern systems.[11]

The 2008 Reserves Agreement was structured such that the parties could regulate both "up" and "down", i.e., by allowing NorthWestern to operate around a set-point of approximately half the total Regulating Reserve Capacity. In each hour, Powerex used eastbound firm transmission service to deliver Regulating Reserve Capacity and Energy to NorthWestern, while NorthWestern used westbound, non-firm transmission service to deliver Balancing Energy back to Powerex. The 2008 Reserves Agreement provided that Powerex and NorthWestern would net the Reserve Energy and Balancing Energy, and that any excess energy transferred from one party to the other after netting would be settled financially and priced at the Dow Jones Mid-Columbia ("Mid-C") Daily Firm On-Peak or Off-Peak Index price, as applicable ("Mid-C Index Price"). The parties contemplated that the agreement would generally be energy-neutral.

Thus, the 2008 Reserves Agreement involved three distinct components:

- A Regulating Reserves Capacity product;
- A set of offsetting sales of energy provided by Powerex and NorthWestern; and

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Northwestern has obtained Regulating Reserve Services from various third parties, including Powerex.

[10] *See* November 28, 2007 Order.

[11] The 2008 Reserves Agreement provided for an additional $5.60/kW-month to cover transmission charges incurred by Powerex for firm transmission service across the British Columbia Transmission Corporation (now the BC Hydro) and Bonneville Power Administrative ("BPA") transmission systems.

- Powerex reservations and scheduling over transmission between the British Columbia and NorthWestern systems, along with dynamic telemetry arrangements over such transmission systems.

In accepting the 2008 Reserves Agreement, the Commission granted a request by Powerex for waiver of its Section 1 of its FERC Rate Schedule No. 1 to permit the service to be provided.[12] The Commission found no evidence that Powerex had market power in the provision of ancillary services in the NorthWestern balancing authority area. In support of this finding, the Commission noted that "Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of the output of the 103 MW Hardin generating plant in Montana under a long-term agreement";[13] however, the Hardin resource is not capable of providing regulation service, and thus, the Commission determined that Powerex's "presence as a seller in the NorthWestern balancing authority area can only be viewed as pro-competitive."[14] Additionally, the Commission noted that Powerex owned no generation assets in the US and controlled through contract only a "very small market share (around 5 percent) of the uncommitted generation in the Northwestern control area."[15]

The Commission noted further that there was no evidence of binding transmission constraints for flows going from west to east in the NorthWestern system, and thus it was "reasonable to assume that for the provision of such a small load (50 MW) there are a variety of sellers between Powerex and NorthWestern that could have provided this service."[16] The Commission observed the approximately 2000 MW of available economic capacity in the NorthWestern balancing authority area during most periods of the year.[17]

Additionally, the Commission found that Powerex's provision of services to NorthWestern under the 2008 Reserves Agreement did not raise any of the market power concerns highlighted in the Commission's order in *Avista Corporation*[18] setting

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[12] November 28, 2007 Order at Ordering PP (A) and (B).

[13] *Id.* at P 26. Powerex notes that the output of the Hardin generating plant has subsequently been increased to 107 MW.

[14] *Id.*

[15] *Id.* at P 28.

[16] *Id.* at P 27.

[17] *Id.*

[18] *Avista Corp.*, 87 FERC ¶ 61,223 at 61,883, *order on reh'g*, 89 FERC ¶ 61,136 (1999) ("*Avista*").

forth the Commission's standards for provision of ancillary services at market-based rates.[19] In particular, there was no evidence that Powerex attempted to withhold these services from the market, Powerex was not the transmission provider in the NorthWestern balancing authority area, and there was no evidence that Powerex could erect barriers to entry.[20]

2. The 2009 Reserves Agreement

Powerex and NorthWestern subsequently negotiated and executed a nearly identical agreement for a two-year term from January 1, 2009 through January 6, 2011 ("2009 Reserves Agreement"), which the Commission accepted on November 14, 2008.[21] Under the 2009 Reserves Agreement, Powerex provided NorthWestern with 40 MW of Regulating Reserve Service, plus an additional 10 MW of service for the period April 30 through July 15 of each year. Pricing for the base contract quantity was fixed at an annualized lower price than the 2008 Reserves Agreement, at $8.90/kW-month, plus the cost of firm transmission across the British Columbia and BPA systems, provided that the total cost of the capacity and transmission could not exceed $15/kW-month. The contract also provided that the parties could mutually agree to increase the quantity of Regulating Reserve Services, with prices for this incremental amount varying from the base quantity price of $8.90/kW-month up to $12.90/kW-month.

Similar to the 2008 Reserves Agreement, the 2009 Reserves Agreement provided a unidirectional regulating reserve service and the intention of the parties that the energy transactions net to near zero. NorthWestern operated around a set-point equal to half the contract's Regulating Reserve Capacity and supplied Balancing Energy back to Powerex that, over time, was intended to net out with the Regulating Reserve Energy that Powerex delivered to NorthWestern.

In support of the 2009 Reserves Agreement, Powerex submitted a market power analysis that confirmed that the agreement did not result in an exercise of market power by Powerex.[22]

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[19] November 28, 2007 Order at P 28.

[20] *Id.*

[21] November 14, 2008 Order.

[22] *See Powerex Corp.*, Executed Agreement for Regulating Reserve Service, Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule, and Request for Expedited Treatment, Attachment A, Report of Carol C. Opatrny, filed in Docket No. ER08-1525-000 (Sept. 12, 2008) ("Opatrny Report").

The Commission accepted the 2009 Reserves Agreement in an order issued November 14, 2008.[23] In that order, the Commission found that the agreement was "unlikely to result in the exercise of market power in the Regulating Reserve Services market in the NorthWestern balancing authority area."[24]

C. NorthWestern's Present Need for Regulating Reserve Service

On February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to the 2008 and 2009 arrangements Powerex and NorthWestern had negotiated and the Commission had approved. NorthWestern informed Powerex that its need was immediate, that time was of the essence, and that NorthWestern required the Agreement to commence no later than February 3, 2012.

NorthWestern and Powerex subsequently confirmed that the appropriate telemetry and other operational requirements were in place to permit the provision of such service.

Attached as Appendix B to this filing is the Affidavit of Michael R. Cashell, Vice President – Transmission for NorthWestern. Mr. Cashell states that on the morning of January 31, 2012, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units. The shutdown was required to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system.

While NorthWestern is currently coping with the limited resources it has available, if these circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as impact the Western interconnected system. As a result, NorthWestern began to contact potential third-party providers to procure short-term Regulating Reserve Service to backstop NorthWestern's imminent needs. Powerex responded very quickly to NorthWestern's request.

Mr. Cashell states further that it is essential that the Commission authorize the sale of the Regulating Reserve Service as described in this filing.

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[23] *See* November 14, 2008 Order.

[24] *Id.* at P 23.

As demonstrated by the statement of Mr. Cashell, NorthWestern's need constitutes an extraordinary circumstance. To assure reliability requirements are met, immediate provision of service by Powerex is necessary.

D. The Current Regulating Reserves Agreement

The current BOM Agreement is nearly identical to the 2008 and 2009 Reserves Agreements accepted by the Commission, but at a lower price than either of the two prior longer-term agreements.

In particular, Powerex will provide NorthWestern up to 70 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge ("Capacity Charge") ranging from $8.00/kW-month to $12.00/kw-month depending on the MW provided.[25] Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and BPA transmission systems; however, the sum of the capacity charge and the transmission charge shall not exceed $15.00/kW-month unless mutually agreed by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system.

As it did in the 2008 and 2009 Agreements, NorthWestern will operate around a set-point that is half the Regulating Reserve Capacity to be provided under the Agreement. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission. The parties generally intend that the energy provided by each party will net out to near zero.

As discussed above, because of NorthWestern's need for service to begin immediately, Powerex will begin providing Regulating Reserve Service under this Agreement on February 3, 2012. Sections 3.1(4) and 3.1(6) of the BOM Agreement expressly provide that the market-based pricing set forth in the Agreement is valid only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex and NorthWestern have agreed:

- Powerex will charge NorthWestern no rate for the regulation service provided and will provide NorthWestern with an invoice for service at a price reflecting $0/MW kW-month for the term of the BOM Agreement.
- Powerex and NorthWestern will not charge each other any rate for balancing energy provided; and each will merely provide the other with an invoice reflecting volumes of energy supplied at a price of $0/MWh.

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[25] The Capacity Charge will be $8.00/kw-month for up to 30 MW, $10.00/kw-month for 30-60 MW and $12.00/kw-month for above 60 MW.

- Powerex will charge NorthWestern the tariff rate for services as provided under the current OATTs of Bonneville Power Administration and BC Hydro.

The BOM Agreement presents no market power concerns. The structure and services provided are nearly identical to the terms the Commission reviewed and found acceptable in 2008 and 2009. The negotiated market price for the BOM services is set at a lower rate than the rate the Commission previously found acceptable and sufficiently competitive. The service is scheduled to be for a term of only 27 days. Thus, there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Powerex and NorthWestern have executed the BOM Agreement in contemplation that NorthWestern requires some level of service through the end of the year. Accordingly, as noted above, Powerex and NorthWestern are simultaneously negotiating another agreement under which Powerex may provide Regulating Reserve Service to NorthWestern from March 1, 2012 through January 8, 2013 under virtually identical terms, under market-based pricing. Powerex will seek a prior Commission authorization to make such sales as soon as that agreement is executed.

III.
REQUEST FOR WAIVER

In order for Powerex to sell Regulating Reserve Service to NorthWestern under the BOM Agreement, as described above, Powerex requests that the Commission grant a retroactive waiver of the provision in Section 1 of Powerex's market-based rate schedule, which limits its ability to make sales of ancillary services to public utilities that are obtaining such services to fulfill their own OATT obligations to provide such services to their customers. The Commission has previously granted similar waivers in *NorthWestern/Powerex* and in *Dynegy Power Marketing, Inc.*[26]

Good cause exists for the Commission to grant Powerex's requested waiver. The Commission has previously granted Powerex waivers to provide market-based sales of Regulating Reserve Service to NorthWestern,[27] and service is provided here under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. Further, the Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation

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[26] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22; *Dynegy Power Marketing, Inc.*, 118 FERC ¶ 61,094, *order on reh'g and clarification*, 120 FERC ¶ 61,278 (2007); *Dynegy Power Marketing, Inc.*, 123 FERC ¶ 61,127 (2008).

[27] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22.

and Frequency Response Service to its customers under Schedule 3 of its OATT. Provision of service under the Agreement is otherwise consistent with the Commission's stated objective of encouraging competitive ancillary service markets.

Moreover, similar to Powerex's and NorthWestern's prior agreements, the Agreement here does not present any market power concerns. Powerex continues to own no generation in the US and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant). As coal-fired generation, this resource is not capable of providing Regulating Reserve Service. Powerex has not attempted to withhold this service from the market, is not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry. The Agreement provides the additional safeguard of expressly contemplating the provision of service at no (i.e., $0/kW-month) rate in the event the Commission does not grant Powerex's requested waiver of the limitation in its market-based rate schedule.

In the event the Commission declines to grant the requested waiver, and to ensure that Powerex sales under the Agreement are not market-based rate sales for which no Commission authorization has been granted, Powerex requests that the Commission treat this filing as a filing of the Agreement on a stand-alone basis under FPA § 205(c) and requests a waiver of the 60-day prior notice requirement for filing. As expressly provided in § 3.1(4) of the Agreement, if Powerex does not obtain the necessary waiver of its Rate Schedule No. 1 by the date on which Powerex is to invoice NorthWestern under the Agreement, (1) Powerex will provide the Regulating Reserve Service to NorthWestern at $0/kW-month; (2) Powerex and NorthWestern will supply balancing energy at $0/MWh; and (3) Powerex will invoice NorthWestern for the associated transmission between British Columbia and NorthWestern at the rates stated in the transmission providers' OATTs. In such case, there would be no rate for energy or capacity service and no detrimental impact to NorthWestern or its Schedule 3 transmission customers. On this basis, even if the Commission declines to grant Powerex the waiver it has requested of its FERC Rate Schedule No. 1, tthe Commission should therefore accept the Agreement as just, reasonable, and not unduly discriminatory or preferential.

If the Commission considers the BOM Agreement under Section 205(c), waiver of the 60-day prior notice requirement is appropriate under FPA § 205(d) and Commission precedent, given the extraordinary circumstances and the need for NorthWestern to obtain this service to ensure reliability and to provide Schedule 3 service to its customers. Section 205(d) of the FPA expressly confers on the Commission the discretion to grant waiver of the 60-day prior notice requirement:

> The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order

> specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.[28]

The Commission has found such good cause to exist and has granted previous requests for waiver of the 60-day prior notice requirement in extraordinary circumstances, e.g., where agreements were "required to compensate sellers for critical generation services needed to assure reliability (at mitigated prices) . . . ."[29] As the Commission has recognized, these types of agreements "do not always lend themselves to being filed 60 days before service commenced."[30] Under *Central Hudson Gas and Electric Corp.*, the Commission is required to balance the need to deter violations of the FPA filing requirements with the requirement that rates not be confiscatory.[31] And as discussed above, extraordinary circumstances exist here and justify Powerex's submitting this Agreement after service commenced.

IV.
REQUEST FOR EXPEDITED TREATMENT

Powerex requests that the Commission consider this filing on an immediate and expedited emergency basis and to issue an order granting retroactive waiver as soon as feasibly possible. This will allow Powerex to mitigate the risk associated with making the transmission arrangements necessary to assure continued and uninterrupted delivery of Regulating Reserve Services to NorthWestern commencing February 3, 2012. This in turn will permit service NorthWestern to continue to provide reliable service on its transmission system.

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[28] 16 U.S.C. § 824d(d).

[29] *ISO New England Inc.*, 112 FERC ¶ 61,057 at P 14 (2005) (*citing Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 (2003)).

[30] *Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 at P 15.

[31] *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

V.
CONCLUSION

For the reasons set forth above, Powerex respectfully requests that the Commission grant its request for expedited treatment, and grant the waiver of Section 1 of its FERC Rate Schedule No. 1 requested herein, effective February 3, 2012.

Respectfully submitted,

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Federal Energy Regulatory Commission

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Mike MacDougall
Karen McDonald
Powerex Corp.

Michael Cashell
Andrew McLain
NorthWestern Energy

#3975160.02

APPENDIX A

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 2nd day of February, 2012 and effective February 3, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 "**Agreement**" shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 "**Balancing Energy**" has the meaning set forth in Section 4.1.

1.3 "**BCHA**" means the British Columbia Hydro and Power Authority.

1.4 "**BCHA Transmission Path**" means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 "**BPA**" means the Bonneville Power Administration, Transmission Services.

1.6 "**BPA Transmission Path**" means firm point-to-point service from the BC/US Border to BPAT.

1.7 "**Balancing Energy Delivery Point**" has the meaning set forth in Section 4.3.

1.8 "**Bankrupt**" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 "Business Day" shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "Collateral Threshold" has the meaning set forth in Section 7.3.

1.11 "Contracted Capacity" has the meaning set forth in Subsection 3.1(1).

1.12 "Credit Rating" shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 "Delivery Hour" shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 "Downgrade Event" has the meaning set forth in section 7.3.

1.15 "FERC" shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 "Good Utility Practice" shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 "Index Rate" shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 "Letter of Credit" shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 "Letter of Credit Default" means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 **"PPT"** means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012 (the "Term").

2.2 **Approvals.** The obligations of the Parties for payment for service under this Agreement, as set forth in subsection 3.1(4) are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall nevertheless provide services to NWE, but shall impose no rate for such services, as set forth in subsection 3.1(4), below. In the event such FERC filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.
Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public*

Utility Commission, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 **Regulating Reserve Services.** During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
70 MW	HE 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that the quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be

made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

In the event FERC does not issue an order granting Powerex's requested waiver by the date Powerex is scheduled to invoice NWE under this Agreement, the Parties agree Powerex shall invoice NWE for the total quantity of Regulating Reserve Service Capacity provided at no rate (i.e., $0/kW-month).). In such circumstances, Powerex will invoice NWE for costs associated with the transmission service it reserves for the provision of the Regulating Reserve Service Capacity, charging NWE for the applicable service reservations at prices as specified in each third party transmission provider's open access transmission tariff.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price. As discussed in

subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, Powerex shall charge no rate for providing service under this Agreement (i.e., invoicing at $0/MWh for Regulating Reserve Energy).

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to

NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of the Term, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the

parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, NWE shall charge no rate for Balancing Energy under this Agreement (i.e., invoicing at $0/MWh for Balancing Energy), however NWE will pay transmission costs as detailed in subsection 3.1(4).

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this

Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex hereunder, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 <u>Credit Provisions</u>

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB

$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8

Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: _____

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: _____

Title: **Robert C. Rowe**
President & Chief Executive Officer

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: President & CEO

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: _____

Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	BCHA Posted Rate as of Execution Date	BCHA Rate in US$ Using the Exchange Rate in Section 6.5
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	Rate as of Execution Date
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Day(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

APPENDIX B

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

) **Docket No. ER12-___**

AFFADAVIT OF MICHAEL R. CASHELL ON BEHALF OF NORTHWESTERN ENERGY

In support of this filing, NorthWestern offers this affidavit to describe its present and immediate need for short-term replacement regulation services and the extraordinary circumstances that gave rise to this need.

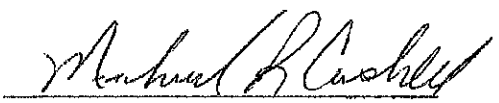
In 2010, NorthWestern constructed the Dave Gates Generating Station ("DGGS") to provide regulation and frequency response service. NorthWestern is required to offer such service under Schedule 3 of its open access transmission tariff ("OATT"). NorthWestern built DGGS for the sole purpose of providing regulation service to NorthWestern's wholesale and bundled retail customers. DGGS became operational on January 1, 2011, and since then DGGS has provided NorthWestern's only source of regulation services.

On January 31, 2012 at 8:10 pm, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units at DGGS to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system. While NorthWestern is currently coping with the limited resources it has available, if these

circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as impact the Western interconnected system.

Immediately, NorthWestern began soliciting potential third party providers to attempt to procure short-term regulation services to backstop NorthWestern's imminent needs. Powerex responded very quickly.

NorthWestern is doing all that it can to ensure that DGGS is operational as soon as possible; however, it is unknown at this time how long it will take to bring the plant back up to full output. In the meantime, it is essential that the Commission authorize the sale of services contemplated by this filing to ensure the continued reliable operation of the NorthWestern transmission system, to ensure continued service to customers and to ensure that there is not a negative impact to the Western interconnected system.



Mike Cashell

Vice President – Transmission

NorthWestern Corporation

40 East Broadway

Butte, MT 59701

Phone: 406-497-4575

Facsimile: 406-497-2150

BRACEWELL &GIULIANI

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Bracewell & Giuliani LLP
111 Congress Avenue
Suite 2300
Austin, TX
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February 2, 2012

CORRECTED VERSION

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VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Powerex Corp.*, Docket No. ER12-___-000

Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d (2006), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2011), Powerex Corp. ("Powerex") hereby respectfully requests a limited waiver of Section 1 of its market-based rate schedule ("FERC Rate Schedule No. 1") in order to provide NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern"), with up to 70 MW of Regulating Reserve Service on an interim basis under an Agreement dated February 2, 2012.[1] Powerex further requests that this waiver be made retroactive to February 3, 2012, the date Powerex is scheduled to commence service at NorthWestern's request.

This request for waiver is being made on an emergency basis, and Powerex seeks immediate and expedited Commission action because of NorthWestern's demonstrated pressing need to obtain Regulating Reserve Service in order to provide the service it is required to offer under Schedule 3 – Regulation and Frequency Response Service of its Open Access Transmission Tariff ("OATT"). Because Powerex has previously provided

[1] A copy of the February 2, 2012 Agreement is attached as Appendix A.

substantially the same service to NorthWestern in 2008 and 2009,[2] the parties negotiated and executed an interim balance-of-the-month ("BOM") agreement that would immediately supply NorthWestern with the needed service as soon as it was technically feasible. Service is scheduled to begin February 3, 2012 and under the terms of the Agreement, will last until February 29, 2012.

Section 1 of Powerex's FERC Rate Schedule No. 1 permits Powerex to provide ancillary services based on bilateral negotiations with counterparties, but provides that Powerex shall not make market-based rate sales of ancillary services to a public utility that is purchasing those services to satisfy its OATT requirements to offer ancillary services to its own customers.[3] As explained below, good cause exists for the Commission to grant a limited and retroactive waiver of this provision to authorize Powerex to make market-based sales to NorthWestern under this Agreement.

The BOM Agreement does not raise any market power concerns. This BOM Agreement is identical in structure to the agreement for which the Commission has twice waived Powerex's Section 1 restriction.[4] The proposed price for the services Powerex is to provide under this BOM Agreement is at a lower rate than that of the prior agreement. And further, the BOM Agreement specifically provides that its market-based pricing will take effect only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex will charge NorthWestern no rate ($0) for the capacity or energy services provided, and it will charge NorthWestern only for related transmission based on prices in place by the relevant transmission providers. Thus, there can be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Concurrent with this filing, Powerex and NorthWestern are presently negotiating a subsequent Regulating Reserve Service agreement that would be effective March 1, 2012 through January 8, 2013 under which the quantity may be reduced at NorthWestern's discretion on a month to month basis. ~~through April 30, 2012 (the "Term"), which Term may be extended upon mutually agreement on a month to month basis until January 31, 2013~~. Powerex will seek prior Commission authorization to make such sales. However, given the exigent circumstances and NorthWestern's urgent need for service, Powerex respectfully asks the Commission to approve the

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[2] *See NorthWestern and Powerex Corp.*, 121 FERC ¶ 61,204 (2007) ("November 28, 2007 Order"); *Powerex Corp. and NorthWestern Corp.*, 125 FERC ¶ 61,179 (2008) ("November 14, 2008 Order").

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[3] *See* Powerex Corp., FERC Rate Schedule No. 1, at Section 1 (effective Sept. 30, 2010) (unpublished Letter Order issued Feb. 14, 2011 in Docket No. ER11-2664-000).

[4] *See* November 28, 2007 Order and November 14, 2008 Order.

instant waiver request on the BOM Agreement retroactively, effective on the date service commenced, February 3, 2012.

Powerex respectfully requests an emergency and expedited order granting the requested and limited waiver, with Commission action as soon as feasibly possible.

I.
CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications in this proceeding should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

Karen McDonald
Senior Trade Policy Analyst
Powerex Corp.
666 Burrard Street, Suite 1400
Vancouver, British Columbia
Canada V6C 2X8
Phone: (604) 891-5000
Fax: (604) 891-5015
karen.mcdonald@powerex.com

Deanna E. King
Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
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Fax: (206) 204-6284
tracy.davis@bgllp.com

III.
BACKGROUND

A. Description of Parties to the Agreement

1. Description of Powerex

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign

Sovereign Immunities Act.[5] Powerex sells power at wholesale in the United States from a portfolio of resources, including capability from BC Hydro system resources, the Canadian Entitlement made available under the Columbia River Treaty, and power acquired from other sellers within the United States and Canada.

Powerex makes wholesale sales in the United States pursuant to market-based rate authority originally granted by the Commission in 1997 and most recently reaffirmed by letter order dated July 26, 2007.[6] In its most recent order approving Powerex's continued authority to sell at market-based rates, the Commission reaffirmed that Powerex continues to lack generation market power in its relevant destination markets, as well as to lack transmission market power and any ability to erect barriers to entry. Powerex has qualified as a Category 1 seller under the Commission's regulations.[7]

Under Section 1 of Powerex's FERC Rate Schedule No. 1, Powerex is authorized to make sales of ancillary services at market-based rates within certain organized markets and also bilaterally, subject to certain conditions imposed upon sellers by the Commission in Order No. 697.[8]

2. Description of NorthWestern

As noted in prior filings with the Commission, NorthWestern owns and operates transmission and distribution facilities in Montana under which it serves customers in the western two-thirds of the state. NorthWestern provides regulated transmission service under its OATT. On January 1, 2011, NorthWestern and its wholly owned subsidiary commenced commercial operation of the Mill Creek Generating Station, now known as the Davey Gates Generating Station ("DGGS"), a 150-MW natural gas-fired

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[5] 28 U.S.C. §§ 1602, *et seq.*

[6] *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, Letter Order issued in Docket No. ER97-4024-012 (Sept. 12, 2000); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-002 (Oct. 30, 2003); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-007 (July 26, 2007).

[7] *See Powerex Corp.*, Letter Order issued in Docket No. ER01-48-018 (Oct. 29, 2010).

[8] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,252 at PP 1058-62, *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,268, *order on clarification*, Order No. 697-B, 124 FERC ¶ 61,055 (2008) (modifying its 1999 ruling in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,163).

generating station near Anaconda, MT.[9] DGGS is used to provide regulation and frequency response service to NorthWestern's transmission customers, as required in Schedule 3 of the NorthWestern OATT.

B. Previous Powerex-NorthWestern Agreements for Regulating Reserve Services

1. The 2008 Reserves Agreement

In 2007, the Commission accepted an agreement between Powerex and NorthWestern under which Powerex would provide Regulating Reserve Service to NorthWestern from January 1, 2008 through December 31, 2008 ("2008 Reserves Agreement").[10] Under this agreement, Powerex was obligated to provide 50 MW of Regulating Reserve Capacity for twelve months at a price of $9.40/kW-month and to provide an additional 10 MW for the period May 1, 2008 to July 15, 2008 at a price of $14.00/kw-month, plus a fixed fee for firm transmission service between the British Columbia and NorthWestern systems.[11]

The 2008 Reserves Agreement was structured such that the parties could regulate both "up" and "down", i.e., by allowing NorthWestern to operate around a set-point of approximately half the total Regulating Reserve Capacity. In each hour, Powerex used eastbound firm transmission service to deliver Regulating Reserve Capacity and Energy to NorthWestern, while NorthWestern used westbound, non-firm transmission service to deliver Balancing Energy back to Powerex. The 2008 Reserves Agreement provided that Powerex and NorthWestern would net the Reserve Energy and Balancing Energy, and that any excess energy transferred from one party to the other after netting would be settled financially and priced at the Dow Jones Mid-Columbia ("Mid-C") Daily Firm On-Peak or Off-Peak Index price, as applicable ("Mid-C Index Price"). The parties contemplated that the agreement would generally be energy-neutral.

Thus, the 2008 Reserves Agreement involved three distinct components:

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[9] Previously, NorthWestern had been relying on contracts with third parties to provide ancillary services in order to maintain its system reliability in accordance with various Commission and North American Electric Reliability Council ("NERC") requirements, as well as to provide the ancillary services required under its OATT. To fulfill these obligations, Northwestern has obtained Regulating Reserve Services from various third parties, including Powerex.

[10] *See* November 28, 2007 Order.

[11] The 2008 Reserves Agreement provided for an additional $5.60/kW-month to cover transmission charges incurred by Powerex for firm transmission service across the British Columbia Transmission Corporation (now the BC Hydro) and Bonneville Power Administrative ("BPA") transmission systems.

- A Regulating Reserves Capacity product;
- A set of offsetting sales of energy provided by Powerex and NorthWestern; and
- Powerex reservations and scheduling over transmission between the British Columbia and NorthWestern systems, along with dynamic telemetry arrangements over such transmission systems.

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In accepting the 2008 Reserves Agreement, the Commission granted a request by Powerex for waiver of its Section 1 of its FERC Rate Schedule No. 1 to permit the service to be provided.[12] The Commission found no evidence that Powerex had market power in the provision of ancillary services in the NorthWestern balancing authority area. In support of this finding, the Commission noted that "Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of the output of the 103 MW Hardin generating plant in Montana under a long-term agreement";[13] however, the Hardin resource is not capable of providing regulation service, and thus, the Commission determined that Powerex's "presence as a seller in the NorthWestern balancing authority area can only be viewed as pro-competitive."[14] Additionally, the Commission noted that Powerex owned no generation assets in the US and controlled through contract only a "very small market share (around 5 percent) of the uncommitted generation in the Northwestern control area."[15]

The Commission noted further that there was no evidence of binding transmission constraints for flows going from west to east in the NorthWestern system, and thus it was "reasonable to assume that for the provision of such a small load (50 MW) there are a variety of sellers between Powerex and NorthWestern that could have provided this service."[16] The Commission observed the approximately 2000 MW of available economic capacity in the NorthWestern balancing authority area during most periods of the year.[17]

Additionally, the Commission found that Powerex's provision of services to

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[12] November 28, 2007 Order at Ordering PP (A) and (B).

[13] *Id.* at P 26. Powerex notes that the output of the Hardin generating plant has subsequently been increased to 107 MW.

[14] *Id.*

[15] *Id.* at P 28.

[16] *Id.* at P 27.

[17] *Id.*

NorthWestern under the 2008 Reserves Agreement did not raise any of the market power concerns highlighted in the Commission's order in *Avista Corporation*[18] setting forth the Commission's standards for provision of ancillary services at market-based rates.[19] In particular, there was no evidence that Powerex attempted to withhold these services from the market, Powerex was not the transmission provider in the NorthWestern balancing authority area, and there was no evidence that Powerex could erect barriers to entry.[20]

2. The 2009 Reserves Agreement

Powerex and NorthWestern subsequently negotiated and executed a nearly identical agreement for a two-year term from January 1, 2009 through January 6, 2011 ("2009 Reserves Agreement"), which the Commission accepted on November 14, 2008.[21] Under the 2009 Reserves Agreement, Powerex provided NorthWestern with 40 MW of Regulating Reserve Service, plus an additional 10 MW of service for the period April 30 through July 15 of each year. Pricing for the base contract quantity was fixed at an annualized lower price than the 2008 Reserves Agreement, at $8.90/kW-month, plus the cost of firm transmission across the British Columbia and BPA systems, provided that the total cost of the capacity and transmission could not exceed $15/kW-month. The contract also provided that the parties could mutually agree to increase the quantity of Regulating Reserve Services, with prices for this incremental amount varying from the base quantity price of $8.90/kW-month up to $12.90/kW-month.

Similar to the 2008 Reserves Agreement, the 2009 Reserves Agreement provided a unidirectional regulating reserve service and the intention of the parties that the energy transactions net to near zero. NorthWestern operated around a set-point equal to half the contract's Regulating Reserve Capacity and supplied Balancing Energy back to Powerex that, over time, was intended to net out with the Regulating Reserve Energy that Powerex delivered to NorthWestern.

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[18] *Avista Corp.*, 87 FERC ¶ 61,223 at 61,883, *order on reh'g*, 89 FERC ¶ 61,136 (1999) ("*Avista*").

[19] November 28, 2007 Order at P 28.

[20] *Id.*

[21] November 14, 2008 Order.

In support of the 2009 Reserves Agreement, Powerex submitted a market power analysis that confirmed that the agreement did not result in an exercise of market power by Powerex.[22]

The Commission accepted the 2009 Reserves Agreement in an order issued November 14, 2008.[23] In that order, the Commission found that the agreement was "unlikely to result in the exercise of market power in the Regulating Reserve Services market in the NorthWestern balancing authority area."[24]

C. NorthWestern's Present Need for Regulating Reserve Service

On February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to the 2008 and 2009 arrangements Powerex and NorthWestern had negotiated and the Commission had approved. NorthWestern informed Powerex that its need was immediate, that time was of the essence, and that NorthWestern required the Agreement to commence no later than February 3, 2012.

NorthWestern and Powerex subsequently confirmed that the appropriate telemetry and other operational requirements were in place to permit the provision of such service.

Attached as Appendix BA to this filing is the Affidavit of Michael R. Cashell, Vice President – Transmission for NorthWestern. Mr. Cashell states that on the morning of January 31, 2012, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units. The shutdown was required to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system.

While NorthWestern is currently coping with the limited resources it has available, if these circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as

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[22] *See Powerex Corp.*, Executed Agreement for Regulating Reserve Service, Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule, and Request for Expedited Treatment, Attachment A, Report of Carol C. Opatrny, filed in Docket No. ER08-1525-000 (Sept. 12, 2008) ("Opatrny Report").

[23] *See* November 14, 2008 Order.

[24] *Id.* at P 23.

impact the Western interconnected system. As a result, NorthWestern began to contact potential third-party providers to procure short-term Regulating Reserve Service to backstop NorthWestern's imminent needs. Powerex responded very quickly to NorthWestern's request.

Mr. Cashell states further that it is essential that the Commission authorize the sale of the Regulating Reserve Service as described in this filing.

As demonstrated by the statement of Mr. Cashell, NorthWestern's need constitutes an extraordinary circumstance. To assure reliability requirements are met, immediate provision of service by Powerex is necessary.

D. The Current Regulating Reserves Agreement

The current BOM Agreement is nearly identical to the 2008 and 2009 Reserves Agreements accepted by the Commission, but at a lower price than either of the two prior longer-term agreements.

In particular, Powerex will provide NorthWestern up to 70 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge ("Capacity Charge") ranging from $8.00/kW-month to $12.00/kw-month depending on the MW provided.[25] Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and BPA transmission systems; however, the sum of the capacity charge and the transmission charge shall not exceed $15.00/kW-month unless mutually agreed by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system.

As it did in the 2008 and 2009 Agreements, NorthWestern will operate around a set-point that is half the Regulating Reserve Capacity to be provided under the Agreement. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission. The parties generally intend that the energy provided by each party will net out to near zero.

As discussed above, because of NorthWestern's need for service to begin immediately, Powerex will begin providing Regulating Reserve Service under this Agreement on February 3, 2012. Sections 3.1(4) and 3.1(6) of the BOM Agreement expressly provides that the market-based pricing set forth in the Agreement is valid only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex and NorthWestern have agreed:

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[25] The Capacity Charge will be $8.00/kw-month for up to 30 MW, $10.00/kw-month for 30-60 MW and $12.00/kw-month for above 60 MW.

- Powerex will charge NorthWestern no rate for the regulation service provided—and will provide NorthWestern with an invoice for service at a price reflecting $0/MW kW-month for the term of the BOM Agreement.
- Powerex and NorthWestern will not charge each other any rate for balancing energy provided; and each will merely provide the other with an invoice reflecting volumes of energy supplied at a price of $0/MWh.
- Powerex will charge NorthWestern the tariff rate for services as provided under the current OATTs of Bonneville Power Administration and BC Hydro.

The BOM Agreement presents no market power concerns. The structure and services provided are nearly identical to the terms the Commission reviewed and found acceptable in 2008 and 2009. The negotiated market price for the BOM services is set at a lower rate than the rate the Commission previously found acceptable and sufficiently competitive. The service is scheduled to be for a term of only 27 days. Thus, there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Powerex and NorthWestern have executed the BOM Agreement in contemplation that NorthWestern requires some level of service through the end of the year. Accordingly, as noted above, Powerex and NorthWestern are simultaneously negotiating another agreement under which Powerex may provide Regulating Reserve Service to NorthWestern from March 1, 2012 through January ~~31~~, 2013 under virtually identical terms, under market-based pricing. Powerex will seek a prior Commission authorization to make such sales as soon as that agreement is executed.

III.
REQUEST FOR WAIVER

In order for Powerex to sell Regulating Reserve Service to NorthWestern under the BOM Agreement, as described above, Powerex requests that the Commission grant a retroactive waiver of the provision in Section 1 of Powerex's market-based rate schedule, which limits its ability to make sales of ancillary services to public utilities that are obtaining such services to fulfill their own OATT obligations to provide such services to their customers. The Commission has previously granted similar waivers in *NorthWestern/Powerex* and in *Dynegy Power Marketing, Inc.*[26]

Good cause exists for the Commission to grant Powerex's requested waiver. The Commission has previously granted Powerex waivers to provide market-based sales of

[26] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22; *Dynegy Power Marketing, Inc.*, 118 FERC ¶ 61,094, *order on reh'g and clarification*, 120 FERC ¶ 61,278 (2007); *Dynegy Power Marketing, Inc.*, 123 FERC ¶ 61,127 (2008).

Regulating Reserve Service to NorthWestern,[27] and service is provided here under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. Further, the Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation and Frequency Response Service to its customers under Schedule 3 of its OATT. Provision of service under the Agreement is otherwise consistent with the Commission's stated objective of encouraging competitive ancillary service markets.

Moreover, similar to Powerex's and NorthWestern's prior agreements, the Agreement here does not present any market power concerns. Powerex continues to own no generation in the US and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant). As coal-fired generation, this resource is not capable of providing Regulating Reserve Service. Powerex has not attempted to withhold this service from the market, is not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry. The Agreement provides the additional safeguard of expressly contemplating the provision of service at no (i.e., $0/kW-month) rate in the event the Commission does not grant Powerex's requested waiver of the limitation in its market-based rate schedule.

In the event the Commission declines to grant the requested waiver, and to ensure that Powerex sales under the Agreement are not market-based rate sales for which no Commission authorization has been granted~~requested~~, Powerex requests that the Commission treat this filing as a filing of the Agreement on a stand-alone basis under FPA § 205(c) and requests a waiver of the 60-day prior notice requirement for filing. As expressly provided in § 3.1(4) of the Agreement, if Powerex does not obtain the necessary waiver of its Rate Schedule No. 1 by the date on which Powerex is to invoice NorthWestern under the Agreement, (1) Powerex will provide the Regulating Reserve Service to NorthWestern at $0/kW-month; (2) Powerex and NorthWestern will supply balancing energy at $0/MWh; and (3) Powerex will invoice NorthWestern for the associated transmission between British Columbia and NorthWestern at the rates stated in the transmission providers' OATTs. In such case, there would be no rate for energy or capacity service and no detrimental impact to NorthWestern or its Schedule 3 transmission customers~~, and~~. On this basis, even if the Commission declines to grant Powerex the waiver it has requested of its FERC Rate Schedule No. 1, tthe Commission should therefore accept the Agreement as just, reasonable, and not unduly discriminatory or preferential.

If the Commission considers the BOM Agreement under Section 205(c), waiver of the 60-day prior notice requirement is appropriate under FPA § 205(d) and Commission precedent, given the extraordinary circumstances and the need for NorthWestern to

[27] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22.

obtain this service to ensure reliability and to provide Schedule 3 service to its customers. Section 205(d) of the FPA expressly confers on the Commission the discretion to grant waiver of the 60-day prior notice requirement:

> The Commission, for good cause shown, may allow changes to take effect without requiring the sixty day's notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.[28]

The Commission has found such good cause to exist and has granted previous requests for waiver of the 60-day prior notice requirement in extraordinary circumstances, e.g., where agreements were "required to compensate sellers for critical generation services needed to assure reliability (at mitigated prices) . . . ."[29] As the Commission has recognized, these types of agreements "do not always lend themselves to being filed 60 days before service commenced."[30] Under *Central Hudson Gas and Electric Corp.*, the Commission is required to balance the need to deter violations of the FPA filing requirements with the requirement that rates not be confiscatory.[31] And as discussed above, extraordinary circumstances exist here and justify Powerex's submitting this Agreement after service commenced.

IV.
REQUEST FOR EXPEDITED TREATMENT

Powerex requests that the Commission consider this filing on an immediate and expedited emergency basis and to issue an order granting retroactive waiver as soon as feasibly possible. This will allow Powerex to mitigate the risk associated with making the transmission arrangements necessary to assure continued and uninterrupted delivery of Regulating Reserve Services to NorthWestern commencing February 3, 2012. This in turn will permit service NorthWestern to continue to provide reliable service on its transmission system.

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[28] 16 U.S.C. § 824d(d).

[29] *ISO New England Inc.*, 112 FERC ¶ 61,057 at P 14 (2005) (*citing Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 (2003)).

[30] *Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 at P 15.

[31] *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

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V.
CONCLUSION

For the reasons set forth above, Powerex respectfully requests that the Commission grant its request for expedited treatment, and grant the waiver of Section 1 of its FERC Rate Schedule No. 1 requested herein, effective February 3, 2012.

Respectfully submitted,

/s/ Deanna E. King
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John Irving
Mike MacDougall
Karen McDonald
Powerex Corp.

Michael Cashell
Andrew McLain
NorthWestern Energy

APPENDIX A

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 2nd day of February, 2012 and effective February 3, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 "Agreement" shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 "Balancing Energy" has the meaning set forth in Section 4.1.

1.3 "BCHA" means the British Columbia Hydro and Power Authority.

1.4 "BCHA Transmission Path" means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 "BPA" means the Bonneville Power Administration, Transmission Services.

1.6 "BPA Transmission Path" means firm point-to-point service from the BC/US Border to BPAT.

1.7 "Balancing Energy Delivery Point" has the meaning set forth in Section 4.3.

1.8 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 "Business Day" shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "Collateral Threshold" has the meaning set forth in Section 7.3.

1.11 "Contracted Capacity" has the meaning set forth in Subsection 3.1(1).

1.12 "Credit Rating" shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 "Delivery Hour" shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 "Downgrade Event" has the meaning set forth in section 7.3.

1.15 "FERC" shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 "Good Utility Practice" shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 "Index Rate" shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 "Letter of Credit" shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 "Letter of Credit Default" means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 **"PPT"** means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 "**Replacement Price**" means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 "**Sales Price**" means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 "**S&P**" shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 "**Uncontrollable Forces**" shall be as defined in Article 12 of this Agreement.

1.37 "**WECC**" means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012 (the "Term").

2.2 **Approvals.** The obligations of the Parties for payment for service under this Agreement, as set forth in subsection 3.1(4) are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall nevertheless provide services to NWE, but shall impose no rate for such services, as set forth in subsection 3.1(4), below. In the event such FERC filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.
Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public*

Utility Commission, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 **Regulating Reserve Services.** During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
70 MW	HE 01 PPT February 3, 2012 through HE 24 PPT February 29, 2012

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that the quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be

made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

In the event FERC does not issue an order granting Powerex's requested waiver by the date Powerex is scheduled to invoice NWE under this Agreement, the Parties agree Powerex shall invoice NWE for the total quantity of Regulating Reserve Service Capacity provided at no rate (i.e., $0/kW-month).). In such circumstances, Powerex will invoice NWE for costs associated with the transmission service it reserves for the provision of the Regulating Reserve Service Capacity, charging NWE for the applicable service reservations at prices as specified in each third party transmission provider's open access transmission tariff.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price. As discussed in

subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, Powerex shall charge no rate for providing service under this Agreement (i.e., invoicing at $0/MWh for Regulating Reserve Energy).

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to

NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of the Term, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the

parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

As discussed in subsections 2.2 and 3.1(4) above, if Powerex does not obtain waiver of the limitations in its Rate Schedule No. 1 from FERC by the date Powerex is to invoice NWE, NWE shall charge no rate for Balancing Energy under this Agreement (i.e., invoicing at $0/MWh for Balancing Energy), however NWE will pay transmission costs as detailed in subsection 3.1(4).

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this

Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex hereunder, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB

$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8

Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

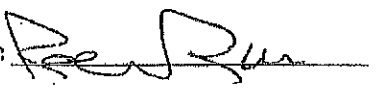
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: _____

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: 

Title: Robert C. Rowe
President & Chief Executive Officer

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

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13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: President & CEO

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: _____

Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Gdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Day(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

APPENDIX B

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

) **Docket No. ER12-___**

AFFADAVIT OF MICHAEL R. CASHELL ON BEHALF OF NORTHWESTERN ENERGY

In support of this filing, NorthWestern offers this affidavit to describe its present and immediate need for short-term replacement regulation services and the extraordinary circumstances that gave rise to this need.

In 2010, NorthWestern constructed the Dave Gates Generating Station ("DGGS") to provide regulation and frequency response service. NorthWestern is required to offer such service under Schedule 3 of its open access transmission tariff ("OATT"). NorthWestern built DGGS for the sole purpose of providing regulation service to NorthWestern's wholesale and bundled retail customers. DGGS became operational on January 1, 2011, and since then DGGS has provided NorthWestern's only source of regulation services.

On January 31, 2012 at 8:10 pm, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units at DGGS to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system. While NorthWestern is currently coping with the limited resources it has available, if these

circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as impact the Western interconnected system.

Immediately, NorthWestern began soliciting potential third party providers to attempt to procure short-term regulation services to backstop NorthWestern's imminent needs. Powerex responded very quickly.

NorthWestern is doing all that it can to ensure that DGGS is operational as soon as possible; however, it is unknown at this time how long it will take to bring the plant back up to full output. In the meantime, it is essential that the Commission authorize the sale of services contemplated by this filing to ensure the continued reliable operation of the NorthWestern transmission system, to ensure continued service to customers and to ensure that there is not a negative impact to the Western interconnected system.

Mike Cashell

Vice President – Transmission

NorthWestern Corporation

40 East Broadway

Butte, MT 59701

Phone: 406-497-4575

Facsimile: 406-497-2150

Moran, Connie C

From: McGowan, Michael
Sent: Wednesday, February 01, 2012 1:55 PM
To: CASHELL, MICHAEL R
Subject: Spreadsheet
Attachments: 2012__Reg_Analysis.xlsx

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

Summary of Cost Estimates Offered

Bidder	Term	Capacity (MW)	Capacity Charge ($/kW-month)	Total Capacity Charge	3rd Party Transmission Rate
Avista					
	February	15	$7.62	$114,300	$2.00/ kW-month
Grant					
	February	50	$9.70	$485,000	$2.00/ kW-month
PowerEx					
	February	50	$9.43	$471,500	$6.10 / kw-month

Estimate of m

Most Economic 93 MW
15 from AVAT, 50 from GRANT and 28 from PWX

Avista Cap. And Trans Cost	$144,300
Grant Cap. And Trans Cost	$585,000
PWX Cap. And Trans Cost	$434,840
Estimated Vairable Cost	$202,862
$1,367,002	**per month**

3rd Party Transmission Cost	Total Annual Cost (for full contract amount)	$/kw-month
$30,000	$144,300	9.62
$100,000.00	$585,000.00	11.7
$305,000	$776,500	15.53
ıonthly variable cost	$202,862	

Table 2 ~ RFP Bids Most Economic Total Cost for 93 MW of Regulation

Bidder	Term	Capacity (MW)	Capacity Charge ($/kW-month)		Total Capacity Charge	3rd Party Transmission Rate
Avista	February	15	$7.62		$914,400	$2.00 / kW-month
Grant	February	25	$10.00		$3,000,000	$2.00 / kW-month
PowerEx	February	58 out of 105	First 30 MW $8.00	Next 28 out of 30 MW $10.00	$6,240,000	$6.10 / kW-month
						Estimated Variable
						Total Re

3rd Party Transmission Cost	Effective Total Cost ($/kW-month)	Total Annual Cost
$240,000	9.62	$1,154,400
$600,000.00	12.00	$3,600,000.00
$4,245,600	14.67	$10,485,600
Costs from 2010 Analysis (93 MW)		$2,487,845
gulating Contract Cost for 93 MW		**$17,727,845**
	$/kW-month	15.88

Interpolated from 91 MW to 93 MW

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Friday, February 03, 2012 3:01 PM
To: McGowan, Michael
Subject: RE: March Contract
Attachments: Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v9.docx; Blackline March 2012 - Jan 2013 v2 vs v9.doc

Mike,

Attached is the latest version with 76 MW as well as a blackline comparison to the version you sent on Wednesday. Please let me know if you have any comments.

We left a blank for the date and we will date it when our CEO signs.

We are preparing the filing to go in on Monday, Feb 6th and plan to send Northwestern a draft version mid-morning before filing.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Friday, February 03, 2012 11:47 AM
To: Aitken, Meredith
Subject: March Contract

Meredith, is the new Redline version of the contract you are going to send us today going to be for 80 MW (additional 10 MW we discussed earlier)?

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. NorthWestern Corporation and its subsidiaries each reserve the right to monitor all e-mail communications through its network.

This email may contain information that is confidential. If you are not the intended recipient you may not distribute or copy this email or any attachments. If you have received this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this __ day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "**Collateral Threshold**" has the meaning set forth in Section 7.3.

1.11 "**Contracted Capacity**" has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "PPT" means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February 27, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe*

Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
76 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Regulating Reserve Capacity quantity for: (i) March 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative

arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012 until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 Regulating Reserve Services Curtailment.
(1) In the event that any BPA or BCHA tariff, policy or system constraints restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 Remedies. In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 Use of Regulating Reserve Services. The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 Unallocated Transmission Costs. In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 Balancing Energy. The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that

that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 Adjustment of Balancing Energy. In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 Balancing Energy Delivery Point. The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 Balancing Energy Price. Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice,. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 Audit. Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 Currency. All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and

Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 Notices - Powerex. Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 Notices – NWE Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy
Credit Manager

600 Market St. W
Huron, SD 57350
Phone 605.353.7517
Fax 605.353.7569

NorthWestern Energy
Director, SOCC Operations and
Transmission Services
40 E. Broadway
Butte, MT, 59701
Phone 406.497.4104
Fax 406.497.4209

11.3 Delivery. Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 Uncontrollable Force. Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 Continued Obligation to Pay. No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.**EXHIBIT B – TRANSMISSION RATES**

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth

Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this ~~5th~~3rd day of ~~September, 2008~~February, 2012 and effective ~~January~~March 1, ~~2009~~2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"~~BCTC~~BCHA"** means the British Columbia ~~Transmission Corporation~~Hydro and Power Authority.

1.4 **"~~BCTC~~BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such

petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "**Collateral Threshold**" has the meaning set forth in Section ~~7.4.~~7.3.

1.11 "**Contracted Capacity**" has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section ~~7.4.~~7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 "**Letter of Credit Default**" means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 "**Moody's**" shall mean Moody's Investors Service, Inc. or its successor.

1.21 "**NWE Transmission Path**" means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 "**Off-Peak**" means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 "**On-Peak**" means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 "**Outage Management Protocol**" means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 "**Performance Assurance**" shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "**PPT**" means Pacific Prevailing Time.

1.27 "**Preschedule Day**" shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s)

~~1.28 "Q1" means January through March; "Q2" means April through June; "Q3" means July through September; and "Q4" means October through December.~~

1.28 ~~1.29~~ "**Qualified Institution**" means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 ~~1.30~~ "**Regulating Reserve Capacity**" means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 ~~1.31~~ "**Regulating Reserve Energy**" means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 ~~1.32~~ **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 ~~1.33~~ **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 ~~1.34~~ **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 ~~1.35~~ **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 ~~1.36~~ **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 ~~1.37~~ **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 ~~1.38~~ **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT ~~January~~March 1, ~~2009~~2012 through HE ~~12~~24 PPT January ~~6, 2011 (the "Term"). The Parties may mutually agree to extend the Term of this Agreement however, in no event shall the Term extend past January 31, 2012. In the event the Parties extend the Term all other terms and conditions of the Agreement shall remain the same.~~8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February 27, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

~~2.2 Approvals. Powerex and NWE will jointly file this Agreement with the FERC in accordance with Section 205 of the Federal Power Act. The obligations of the Parties for service under this agreement are conditional upon FERC's acceptance for filing or approval without change of the terms and conditions herein. In the event that FERC does not approve of this Agreement or approves it on conditions that are unacceptable to either Party in its sole discretion, the Parties' obligations hereunder shall terminate effective as of the date of the FERC order disapproving or conditionally approving this Agreement.~~ In the event such 205

filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party~~, a third party~~ or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review ~~originally~~ set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power ~~Comm'n~~Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) ~~(the "*Mobile-Sierra*" doctrine), and as~~, affirmed ~~in~~by *Morgan Stanley Capital Group, Inc. v. Public Utility ~~Dist.~~District No. 1 of Snohomish County, ~~et al.,~~ 554 U.S. ~~(June 26,~~ 128 S. Ct. 2733 (2008)~~.~~ and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

	Regulating Reserve Capacity	Time Period
~~(i)~~	~~40~~76 MW	HE 01 PPT ~~January~~March 1, ~~2009~~2012 through HE ~~11~~24 PPT ~~April 30, 2009~~January 8, 2013
~~(ii)~~	~~50 MW~~	~~HE 12 PPT April 30, 2009 through HE 11 PPT July 15, 2009~~
~~(ii~~	~~40 MW~~	~~HE 12 PPT July 15, 2009 to HE 11 PPT April 30, 2010~~

~~(iv)~~	~~50 MW~~	~~HE 12 PPT April 30, 2010 through HE 11 PPT July 15, 2010~~
~~(v)~~	~~40 MW~~	~~HE 12 PPT July 15, 2010 to HE 11 PPT January 6, 2011~~

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Regulating Reserve Capacity quantity for: (i) March 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) ~~BCTC~~BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: ~~The Parties agree that Powerex shall not be obligated to procure, redirect or demonstrate existing transmission rights for the required quantity of firm transmission rights on the BCTC Transmission Path or BPA Transmission Path until such time as FERC approval is obtained and (i) such approval is unconditional or (ii) both Parties have confirmed that they accept the conditions imposed by the FERC in accordance with Section 2.2. Powerex shall, within ten (10) Business Days after the satisfaction of (i) or (ii) above, perform one or a combination of the following actions to secure 40MW of the BCTC Transmission Path and 40MW of the BPA Transmission Path for the period January 1, 2009 through December 31, 2010:~~

~~(a) submit its request to purchase yearly firm transmission capacity,~~
~~(b) submit its request to redirect yearly firm transmission capacity, or~~
~~(c) demonstrate it has existing yearly firm transmission rights that shall be dedicated to meet Powerex's transmission service obligations under this Agreement.~~In the event that ~~40 MW~~quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. ~~If at any point from the date of FERC approval through December 31, 2010 the BCTC or the BPA Transmission Paths become available the~~The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available,

both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

~~With respect to the incremental 10 MW of Contracted Capacity for the period May 1through July 15, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path until such time as monthly reservations are allowed on the BCTC and BPA transmission systems. In the event such transmission is unavailable, each of the Parties shall be relieved of its obligations under this Agreement with respect to the incremental 10 MW of Contracted Capacity.~~

~~With respect to the period of January 1, 2011 through January 6, 2011, Powerex shall not be obligated to acquire or redirect the BCTC and BPA Transmission Path beyond December 31, 2010 until such time as daily reservations are allowed on the BCTC and BPA systems. In the event the required BCTC Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.~~

~~In the event the term of this agreement is extended pursuant to Section 2.1,~~ Powerex shall not be obligated to acquire or redirect the ~~BCTC~~BCHA and BPA Transmission Path beyond ~~January 6, 2011~~April 30, 2012 until such time as monthly reservations are allowed on the ~~BCTC~~BCHA and BPA systems. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the ~~BCTC~~BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the ~~BCTC~~BCHA and BPA systems. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth ~~below~~in the following table for providing Regulating Reserve Capacity (the "Capacity Charge"): ~~$8.90/kWmonth, plus~~

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the ~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. ~~BCTC~~BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the ~~BCTC~~BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of ~~BCTC~~BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity ~~in accordance with the following table.~~ (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

~~Time of Deliveries~~	~~Quarter~~	~~Next 20 MW of Regulating Reserve Capacity ($/kW-month)~~	~~Next 5 MW of Regulating Reserve Capacity ($/kW-month)~~	~~Next 15 MW of Regulating Reserve Capacity ($/kW-month)~~	~~Next 25 MW of Regulating Reserve Capacity ($/kW-month)~~
~~On-Peak~~	~~Q1~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~
	~~Q2~~	~~8.90~~	~~8.90~~	~~10.90~~	~~12.90~~
	~~Q3~~	~~10.90~~	~~12.90~~	~~12.90~~	~~N/A~~

	Q4	10.90	12.90	12.90	N/A
Off Peak	Q1	10.90	12.90	12.90	N/A
	Q2	8.90	8.90	10.90	12.90
	Q3	10.90	12.90	12.90	N/A
	Q4	10.90	12.90	12.90	N/A

In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the ~~BCTC~~BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or ~~BCTC~~BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or ~~BCTC~~BCHA tariff ~~or~~, policy or system constraints restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total

quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

~~3.11 Unallocated Transmission Costs.~~

~~(a) In the event that, prior to the commencement of the Term, Powerex has reserved transmission as contemplated in Subsection 3.1(2) and 3.1(3) hereof and following such reservation the commencement of the Term is delayed as provided in Section 2.1 and provided that the delay or termination was outside of the control of Powerex, NWE shall reimburse Powerex for all costs of such transmission, to the extent that such costs are not compensated under Subsection 3.1(3) hereof. Powerex shall take commercially reasonable steps to mitigate any loss.~~

3.11 ~~(b)~~ **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2)

of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

~~(1) For energy received by Powerex at BPAT and delivered to the BC Hydro system:~~

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; ~~minus~~ and
(ii) the then applicable ~~BCTC~~BCHA hourly PTP rate plus ancillary services plus losses.

~~(2) For energy received by Powerex at BPAT and delivered to a point other than the BC Hydro system~~

~~The Index Rate applicable to such hour minus (the then applicable BPA PTP rates plus ancillary services plus losses).~~

~~(3) For energy received by Powerex on the NWE integrated transmission system:~~

~~The Index Rate applicable to such hour.~~

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by ~~BCTC~~BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each

month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice,. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 Invoices. All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 Audit. Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and

metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of ~~0.94 Cdn~~1.00 CAD$: ~~1.01~~1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 ~~or 7.4~~ hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 Credit Provisions

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section ~~7.4~~7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section ~~7.4~~7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section ~~7.4~~7.3(1) and not section ~~7.4~~7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have

received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore.

The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission ~~Marketing~~Services 40 E. Broadway Butte, MT, 59701 Phone ~~406.497.4575~~406.497.4104 Fax ~~406.497.2054~~406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 Authority. Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 Integration. This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: ~~President & CEO~~ _____	Title:

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to ~~BCTC~~BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

~~BCTC~~BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both ~~BCTC~~BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), ~~BCTC~~BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, ~~BCTC~~BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from ~~BCTC~~BCHA to NWE. The resultant Delivery signal would result in ~~BCTC~~BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

~~BCTC~~BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

~~BCTC~~BCHA Transmission Services Rates:

Description of Service	**~~BCTC~~BCHA Posted Rate as of Execution Date**	**~~BCTC~~BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$~~4.009~~3.912/~~kWmonth~~kW-month	US$~~3.768~~3.912/~~kWmonth~~kW-month
Scheduling, System Control and Dispatch Service	Cdn$~~0.106~~0.0956/~~MW~~kW-month	US$~~0.1.000~~0.0956/~~MW~~kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$~~0.825~~0.602/~~MW~~kW-month	US$~~0.776~~0.602/~~MW~~kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$~~0.004~~0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	~~Quarter~~Month(s) ~~(Q1, Q2, Q3 or Q4)~~	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Friday, February 03, 2012 1:28:14 PM

Input:	
Document 1 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v2.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 v2
Document 2 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v9.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v9
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	106
Deletions	189
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	307

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Friday, February 03, 2012 3:36 PM
To: McGowan, Michael; Johnston, Casey E; CASHELL, MICHAEL R
Subject: Order granting emergency wavier re Powerex Corp under ER12-984.
Attachments: 20120203-3048(26880903)[1].doc

Attached is a quick response from FERC.

Best regards,
Meredith

Meredith Aitken
Marketing Manager, Powerex Corp.
Desk: 604-891-5014
Cell: 604-644-5189
Email: Meredith.Aitken@powerex.com

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138 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Powerex Corp. Docket No. ER12-984-000

ORDER GRANTING EMERGENCY WAIVER

(Issued February 3, 2012)

1. On February 2, 2012, Powerex Corp. (Powerex) filed an emergency request for limited waiver of Section 1 of its market-based rate schedule[1] in order to provide NorthWestern Corporation (NorthWestern) with up to 70 megawatts (MW) of Regulating Reserve Service on an interim basis from February 3, 2012 until February 29, 2012, under an agreement dated February 2, 2012 (Agreement).

2. Powerex seeks expedited action because of NorthWestern's immediate need to obtain Regulating Reserve Service in order to provide the service NorthWestern is required to offer under Schedule 3 (Regulation and Frequency Response Service) of NorthWestern's OATT.[2] As discussed below, we will grant a limited waiver of Section 1 of Powerex's Rate Schedule No. 1, effective February 3, 2012, until February 29, 2012.

---

[1] Powerex Corp., Rate Schedule No. 1, 0.0.0 (effective Sept. 30, 2010). Section 1 of Powerex's Rate Schedule No. 1 limits its ability to make sales of ancillary services at market-based rates to transmission providers for use in fulfilling their Open Access Transmission Tariff (OATT) obligations.

[2] Powerex states that it and NorthWestern are presently negotiating another agreement under which Powerex may provide Regulating Reserve Service to NorthWestern from March 1, 2012 through January 8, 2013, under which the quantity may be reduced at NorthWestern's discretion on a month to month basis. Powerex states that it will seek prior Commission authorization to make such sales as soon as that agreement is executed.

Background

3. Powerex states that NorthWestern contacted Powerex on February 1, 2012 to request the immediate provision of Regulating Reserve Service. Referencing an affidavit by the Vice President – Transmission for NorthWestern attached to Powerex's filing, Powerex states that on the morning of January 31, 2012, NorthWestern was unexpectedly required to completely shut down the Dave Gates Generating Station, a 150 MW natural gas-fired generating station near Anaconda, Montana, due to significant equipment damage on each of the three generating units. The shutdown was required to prevent potentially catastrophic damage to the plant's power turbines. Powerex states that since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system. Powerex states that NorthWestern's lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as impact the Western interconnected system. Powerex represents that, as demonstrated by the affidavit, NorthWestern's need constitutes an extraordinary circumstance and that to assure reliability requirements are met, immediate provision of service by Powerex is necessary.

4. Powerex represents that the Agreement does not present any market power concerns. It states that the service to be provided is under rates, terms, and conditions that are substantially similar to two prior agreements for which the Commission previously granted Powerex waiver of Section 1 of its tariff.[3] Powerex states that the service is scheduled to be for a term of only 27 days. Powerex states that the Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes.

5. In the event the Commission declines to grant the requested waiver, Powerex states that the Agreement provides that Powerex will charge NorthWestern no rate ($0) for the capacity or energy services provided, and will charge NorthWestern only for related transmission based on prices in place by the relevant transmission providers.

Discussion

6. The Commission finds that good cause exists under the circumstances presented to expeditiously grant the requested limited waiver, to be effective February 3, 2012, to allow the provision of Regulating Reserve Service from February 3, 2012 until

[3] *NorthWestern Corp.*, 121 FERC ¶ 61,204 (2007); *Powerex Corp.*, 125 FERC ¶ 61,179 (2008).

February 29, 2012. However, if any entities believe themselves to be adversely affected by our actions we urge them to make prompt filings with us so that we may address their concerns.[4]

The Commission orders:

Powerex's request for limited waiver of Section 1 of its Rate Schedule No. 1 is hereby granted, effective February 3, 2012, until February 29, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[4] Because of the need to respond quickly to the emergency situation, we are issuing this order without prior notice, but it will be subject to rehearing.

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Monday, February 06, 2012 5:07 PM
To: McGowan, Michael
Subject: RE: PWX Agreement - NWE Redline V9
Attachments: Blackline Reg Reserves v10 vs v11.doc; Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v11.docx

Mike,

Please see the attached versions and let me know if you have any comments. We are ready to execute on our side if this works for you.

Meredith

From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Monday, February 06, 2012 12:40 PM
To: Aitken, Meredith
Cc: McGowan, Michael
Subject: PWX Agreement - NWE Redline V9
Importance: High

Meredith,

Attached are NorthWesterns latest turn on the agreement. Note the redlines and also a couple of notes I inserted for you to consider concerning the FERC approval and the Long Term rates as opposed to the monthly rates for BCHA.

Let me know if this will work for PWX.

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

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AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 6th day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general

arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section 7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 **"PPT"** means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February ~~27~~24, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to

such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission,* 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
76 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Contracted Capacity quantity for: (i) March ~~and April~~ 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to

assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012 until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties mutually determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA ~~Monthly~~Long-Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA ~~Monthly~~Long-Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge" and shall be applicable to each month of the Term)(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the

event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed ~~$15~~15.00/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services

shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**

(1) In the event that any BPA or BCHA tariff ~~or~~, policy or dynamic limitation restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load or resources on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's

economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 Unallocated Transmission Costs. In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 Balancing Energy. The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 Adjustment of Balancing Energy. In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 Balancing Energy Delivery Point. The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30

minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information,

including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 Credit Provisions

(1) If NWE has a material negative change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in

accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy
Credit Manager

600 Market St. W
Huron, SD 57350
Phone 605.353.7517
Fax 605.353.7569

NorthWestern Energy
Director, SOCC Operations and Transmission Services
40 E. Broadway
Butte, MT, 59701
Phone 406.497.4104
Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address

to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 No Third Party Beneficiary. This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 Authority. Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 Integration. This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA ~~Monthly~~Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA ~~Monthly~~Long Term Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Monday, February 06, 2012 3:58:38 PM

Input:	
Document 1 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v10.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v10
Document 2 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v11.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v11
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
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Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	9
Deletions	8
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	17

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Monday, February 06, 2012 5:51 PM
To: McGowan, Michael
Subject: Fw: PWX Agreement - v12
Attachments: Blackline v11 vs v12.doc; Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v12.docx

Mike, here is the change for April and dated Feb 7.

Meredith

From: Ratzlaff, Jay
Sent: Monday, February 06, 2012 04:48 PM
To: Aitken, Meredith
Cc: Holman, Mark
Subject: RE: PWX Agreement - v12

Have them execute this version – re-dated Feb 7 and with April included.

Jay Ratzlaff
Corporate Counsel and Manager, Contracts

Powerex Corp.
Direct: 604 895 7067

This message may contain information that is confidential or privileged and is intended only for the individual or entity addressed. If you are not the intended recipient you may not disseminate or copy this message or any attachments. If you have received this communication in error, please notify the sender and delete this communication from your system immediately. Thank you.

This email may contain information that is confidential. If you are not the intended recipient you may not distribute or copy this email or any attachments. If you have received this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 7th day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general

arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section 7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 "**Letter of Credit Default**" means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 "**Moody's**" shall mean Moody's Investors Service, Inc. or its successor.

1.21 "**NWE Transmission Path**" means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 "**Off-Peak**" means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 "**On-Peak**" means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 "**Outage Management Protocol**" means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 "**Performance Assurance**" shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "**PPT**" means Pacific Prevailing Time.

1.27 "**Preschedule Day**" shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 "**Qualified Institution**" means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 "**Regulating Reserve Capacity**" means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 "**Regulating Reserve Energy**" means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February 24, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to

such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission,* 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 **Regulating Reserve Services.** During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
76 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Contracted Capacity quantity for: (i) March and April 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to

assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012 until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties mutually determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long-Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long-Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge" and shall be applicable to each month of the Term)(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the

event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15.00/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services

shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff, policy or dynamic limitation restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load or resources on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's

economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30

minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information,

including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 Credit Provisions

(1) If NWE has a material negative change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in

accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy
Credit Manager

600 Market St. W
Huron, SD 57350
Phone 605.353.7517
Fax 605.353.7569

NorthWestern Energy
Director, SOCC Operations and Transmission Services
40 E. Broadway
Butte, MT, 59701
Phone 406.497.4104
Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address

to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 No Third Party Beneficiary. This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 Authority. Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 Integration. This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Long Term Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Monday, February 06, 2012 4:45:53 PM

Input:	
Document 1 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v11.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v11
Document 2 ID	file://C:\Users\jratzlaf\Documents\Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v12.docx
Description	Pwx-NorthwesternRegulatingReserveServicesAgreement March 2012 - Jan 2013 v12
Rendering set	Standard

Legend:	
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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	2
Deletions	1
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	3

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 7th day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "**Collateral Threshold**" has the meaning set forth in Section 7.3.

1.11 "**Contracted Capacity**" has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "**PPT**" means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February 24, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe*

Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
76 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Contracted Capacity quantity for: (i) March and April 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative

arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012 until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties mutually determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long-Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long-Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge" and shall be applicable to each month of the Term)(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15.00/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of

Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff, policy or dynamic limitation restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of

Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load or resources on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity").

With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this

Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 Effect of an Event of Default. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 <u>Credit Provisions</u>

(1) If NWE has a material negative change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB

$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia

V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Long Term Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Moran, Connie C

From: Aitken, Meredith [Meredith.Aitken@powerex.com]
Sent: Tuesday, February 07, 2012 11:32 AM
To: McGowan, Michael
Subject: RE: March 2012 - Powerex Agreement
Attachments: Powerex Feb. 7, 2012 Request for Waiver.pdf

Mike,

Here is the filing letter.

Meredith

-----Original Message-----
From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Tuesday, February 07, 2012 10:21 AM
To: Aitken, Meredith
Subject: Re: March 2012 - Powerex Agreement

Meredith could you send us a draft of the filing letter?
Mike McGowan

----- Original Message -----
From: Aitken, Meredith [mailto:Meredith.Aitken@powerex.com]
Sent: Tuesday, February 07, 2012 10:02 AM
To: McGowan, Michael
Subject: RE: March 2012 - Powerex Agreement

Hi Mike,

Here is the fully executed agreement. The filing is being finalized now.

Best,
Meredith

-----Original Message-----
From: McGowan, Michael [mailto:Michael.McGowan@northwestern.com]
Sent: Tuesday, February 07, 2012 7:25 AM
To: Aitken, Meredith
Subject: FW: March 2012 - Powerex Agreement

Meredith, attached is the agreement you sent out yesterday afternoon signed by NorthWestern. Looks like we should be good to file.

Is the filing letter going ok?

Thanks,

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

-----Original Message-----
From: Hunt, Gayle A
Sent: Tuesday, February 07, 2012 7:59 AM
To: CASHELL, MICHAEL R; Johnston, Casey E; McGowan, Michael; McLain, Andrew
Subject: FW: March 2012 - Powerex Agreement

Attached is the NWE signed Powerex Agreement - March, 2012. Thanks. Gayle

-----Original Message-----
From: GO4CADM1@northwestern.com [mailto:GO4CADM1@northwestern.com] On Behalf Of GO4CADM1@
Sent: Tuesday, February 07, 2012 8:13 AM
To: Hunt, Gayle A
Subject: March 2012 - Powerex Agreement

Reply to: GO4CADM1@northwestern.com <GO4CADM1@northwestern.com> Device Name: Not Set Device Model: MX-4501N
Location: Not Set

File Format: PDF MMR(G4)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.
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-PowerexDisclaimerID5.2.8.1541

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BRACEWELL
&GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
London

Deanna E. King
Partner

512.494.3612 Office
512.479.3912 Fax

deanna.king@bgllp.com

Bracewell & Giuliani LLP
111 Congress Avenue
Suite 2300
Austin, TX
78701-4061

February 7, 2012

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Powerex Corp.*, Docket No. ER12-___-000

Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d (2006), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2011), Powerex Corp. ("Powerex") hereby respectfully requests a limited waiver of Section 1 of its market-based rate schedule ("FERC Rate Schedule No. 1") in order to provide NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern"), with up to 76 MW of Regulating Reserve Service under an Agreement dated February 7, 2012 ("Balance of the Year ("BOY") Agreement").[1] This BOY Agreement is intended to provide NorthWestern with the ability to extend the service provided by Powerex under a February 2, 2012 balance-of-month arrangement ("BOM Agreement") reviewed by the Commission on Friday, February 3, 2012 in Docket No. ER12-984-000.[2]

[1] A copy of the February 7, 2012 BOY Agreement is attached as Appendix A.

[2] On February 2, 2012, as corrected in an errata filed on February 3, 2012, Powerex filed a request for a retroactive waiver of Section 1 of its FERC Rate Schedule No. 1 in connection with an interim BOM agreement between Powerex and NorthWestern that would immediately supply NorthWestern with the needed service as soon as it was technically feasible. Service commenced February 3, 2012 and, under the terms of the BOM Agreement, will last until

Powerex further requests that this waiver be made effective March 1, 2012, the date Powerex is scheduled to commence service at NorthWestern's request, and that the waiver terminate on January 8, 2013, coincident with the agreement's expiry.

Powerex seeks expedited Commission action because of NorthWestern's demonstrated pressing need to obtain Regulating Reserve Service in order to provide the service it is required to offer under Schedule 3 – Regulation and Frequency Response Service of its Open Access Transmission Tariff ("OATT"). Powerex requests that the Commission act on the request for the limited waiver by February 24, 2012 to allow Powerex time to mitigate the costs associated with the transmission and associated arrangements that have been put in place to provide the service should the requested waiver not be granted.

As explained below, good cause exists for the Commission to grant a limited waiver of this provision to authorize Powerex to make market-based sales to NorthWestern under the BOY Agreement, which is substantially the same service Powerex was previously authorized to provide NorthWestern in 2008 and 2009.[3]

The BOY Agreement does not raise market power concerns. This BOY Agreement is identical in structure and similar in term to the agreement for which the Commission has twice waived Powerex's Section 1 restriction.[4] The proposed price for the services Powerex is to provide under this BOY Agreement is at a lower rate than that of those 2008 and 2009 agreements. And further, the BOY Agreement specifically provides that NorthWestern has the unilateral right to reduce service under the BOY Agreement, subject only to notification of Powerex, should it find that it needs less service or the service is no longer necessary.

February 29, 2012. This Commission granted the emergency waiver on February 3, 2012. *See Powerex Corp.*, 138 FERC ¶ 61,099 (2012).

[3] *See NorthWestern and Powerex Corp.*, 121 FERC ¶ 61,204 (2007) ("November 28, 2007 Order"); *Powerex Corp. and NorthWestern Corp.*, 125 FERC ¶ 61,179 (2008) ("November 14, 2008 Order").

[4] *See* November 28, 2007 Order and November 14, 2008 Order.

I.
CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications in this proceeding should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

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II.
BACKGROUND

A. Description of Parties to the Agreement

1. Description of Powerex

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign Sovereign Immunities Act.[5] Powerex sells power at wholesale in the United States from a portfolio of resources, including capability from BC Hydro system resources, the

[5] 28 U.S.C. §§ 1602, *et seq.*

Canadian Entitlement made available under the Columbia River Treaty, and power acquired from other sellers within the United States and Canada.

Powerex makes wholesale sales in the United States pursuant to market-based rate authority originally granted by the Commission in 1997 and most recently reaffirmed by letter order dated July 26, 2007.[6] In its most recent order approving Powerex's continued authority to sell at market-based rates, the Commission reaffirmed that Powerex continues to lack generation market power in its relevant destination markets, as well as to lack transmission market power and any ability to erect barriers to entry. Powerex has qualified as a Category 1 seller under the Commission's regulations.[7]

Under Section 1 of Powerex's FERC Rate Schedule No. 1, Powerex is authorized to make sales of ancillary services at market-based rates within certain organized markets and also bilaterally, subject to certain conditions imposed upon sellers by the Commission in Order No. 697.[8] Section 1 of Powerex's FERC Rate Schedule No. 1 permits Powerex to provide ancillary services based on bilateral negotiations with counterparties, but provides that Powerex shall not make market-based rate sales of ancillary services to a public utility that is purchasing those services to satisfy its OATT requirements to offer ancillary services to its own customers.[9]

2. Description of NorthWestern

As noted in prior filings with the Commission, NorthWestern owns and operates transmission and distribution facilities in Montana under which it serves customers in the western two-thirds of the state. NorthWestern provides regulated transmission service under its OATT. On January 1, 2011, NorthWestern commenced commercial

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[6] *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, issued in Docket No. ER97-4024-012 (Sept. 12, 2000) (unpublished letter order); *Powerex Corp.*, issued in Docket No. ER01-48-002 (Oct. 30, 2003) (unpublished letter order); *Powerex Corp.*, issued in Docket No. ER01-48-007 (July 26, 2007) (unpublished letter order).

[7] *See Powerex Corp.*, Letter Order issued in Docket No. ER01-48-018 (Oct. 29, 2010).

[8] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,252 at PP 1058-62, *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,268, *order on clarification*, Order No. 697-B, 124 FERC ¶ 61,055 (2008) (modifying its 1999 ruling in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,163).

[9] *See* Powerex Corp., FERC Rate Schedule No. 1, at Section 1 (effective Sept. 30, 2010) (unpublished Letter Order issued Feb. 14, 2011 in Docket No. ER11-2664-000).

operation of the Mill Creek Generating Station, now known as the Dave Gates Generating Station ("DGGS"), a natural gas-fired generating station near Anaconda, MT.[10] DGGS is used to provide regulation and frequency response service to NorthWestern's transmission customers, as required in Schedule 3 of the NorthWestern OATT.

B. NorthWestern's Present Need for Regulating Reserve Service

On February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to the 2008 and 2009 arrangements Powerex and NorthWestern had negotiated and the Commission had approved. NorthWestern informed Powerex that its need was immediate, that time was of the essence, and that NorthWestern required the Agreement to commence no later than February 3, 2012.

NorthWestern and Powerex subsequently confirmed that the appropriate telemetry and other operational requirements were in place to permit the provision of such service.

Attached as Appendix B to this filing is the Affidavit of Michael R. Cashell, Vice President – Transmission for NorthWestern. This Affidavit was also attached as an Exhibit to the BOM Agreement filed in Powerex's errata on Friday, February 3, 3012 in Docket No. ER12-984-000, at which time NorthWestern was without any resources to provide regulation.[11] While NorthWestern has currently satisfied its regulation needs,

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[10] Previously, NorthWestern had been relying on contracts with third parties to provide ancillary services in order to maintain its system reliability in accordance with various Commission and North American Electric Reliability Council ("NERC") requirements, as well as to provide the ancillary services required under its OATT. To fulfill these obligations, Northwestern has obtained Regulating Reserve Services from various third parties, including Powerex.

[11] The transmittal letter in Docket No. ER12-984-000 describes NorthWestern's immediate need. Citing Mr. Cashell's affidavit, the filing letter states:

> "On the evening of January 31, 2012, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units. The shutdown was required to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system.
>
> While NorthWestern is currently coping with the limited resources it has available, if these circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of

the BOM Agreement, which the Commission accepted on February 3, 2012, expires at the end of February. Since NorthWestern does not yet know the extent of the forced outage at DGGS or precisely when it will be able to begin to bring DGGS back into service, it requires the additional capacity contemplated by the BOY Agreement to ensure reliable service to its customers.

It is essential that the Commission authorize the sale of the Regulating Reserve Service as described in this filing so that NorthWestern can continue to provide reliable electric service.

As a result of NorthWestern's urgent and extraordinary need, as explained below, Powerex and NorthWestern negotiated two agreements for Powerex's provision of Regulating Reserve Service:

- A 27-day agreement for immediate service, to commence at HE1 on Friday, February 3, 2012 and extend through February 29, 2012, which was filed with the Commission for immediate review and action on an emergency basis; and

- An agreement extending the service some ten additional months, from March 1, 2012 through January 8, 2013, with quantities subject to adjustment or reduction by NorthWestern – to be filed with the Commission for expedited review and action.

As demonstrated by the statement of Mr. Cashell, NorthWestern's need constitutes an extraordinary circumstance.

C. The BOY Agreement Mirrors Previous Powerex-NorthWestern Agreements for Regulating Reserve Services

As explained below, the regulating reserve service arrangement NorthWestern sought from Powerex on February 1, 2012 generally mirrors the service arrangements NorthWestern obtained from Powerex in 2008 and in 2009.

1. The 2008 Reserves Agreement

In 2007, the Commission accepted an agreement between Powerex and NorthWestern under which Powerex would provide Regulating Reserve Service to NorthWestern from January 1, 2008 through December 31, 2008 ("2008 Reserves Agreement").[12] Under

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NorthWestern's system as well as impact the Western interconnected system. As a result, NorthWestern began to contact potential third-party providers to procure short-term Regulating Reserve Service to backstop NorthWestern's imminent needs. Powerex responded very quickly to NorthWestern's request."

[12] *See* November 28, 2007 Order.

this agreement, Powerex was obligated to provide 50 MW of Regulating Reserve Capacity for twelve months at a price of $9.40/kW-month and to provide an additional 10 MW for the period May 1, 2008 to July 15, 2008 at a price of $14.00/kw-month, plus a fixed fee for firm transmission service between the British Columbia and NorthWestern systems.[13]

The 2008 Reserves Agreement was structured such that the parties could regulate both "up" and "down", i.e., by allowing NorthWestern to operate around a set-point of approximately half the total Regulating Reserve Capacity. In each hour, Powerex used eastbound firm transmission service to deliver Regulating Reserve Capacity and Energy to NorthWestern, while NorthWestern used westbound, non-firm transmission service to deliver Balancing Energy back to Powerex. The 2008 Reserves Agreement provided that Powerex and NorthWestern would net the Reserve Energy and Balancing Energy, and that any excess energy transferred from one party to the other after netting would be settled financially and priced at the Dow Jones Mid-Columbia ("Mid-C") Daily Firm On-Peak or Off-Peak Index price, as applicable ("Mid-C Index Price"). The parties contemplated that the agreement would generally be energy-neutral.

Thus, the 2008 Reserves Agreement involved three distinct components:

- A Regulating Reserves Capacity product;
- A set of offsetting sales of energy provided by Powerex and NorthWestern; and
- Powerex reservations and scheduling over transmission between the British Columbia and NorthWestern systems, along with dynamic telemetry arrangements over such transmission systems.

In accepting the 2008 Reserves Agreement, the Commission granted a request by Powerex for waiver of its Section 1 of its FERC Rate Schedule No. 1 to permit the service to be provided.[14] The Commission found no evidence that Powerex had market power in the provision of ancillary services in the NorthWestern balancing authority area. In support of this finding, the Commission noted that "Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of the output of

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[13] The 2008 Reserves Agreement provided for an additional $5.60/kW-month to cover transmission charges incurred by Powerex for firm transmission service across the British Columbia Transmission Corporation (now the BC Hydro) and Bonneville Power Administrative ("BPA") transmission systems.

[14] November 28, 2007 Order at Ordering PP (A) and (B).

the 107 MW Hardin generating plant in Montana under a long-term agreement";[15] however, the Hardin resource is not capable of providing regulation service, and thus, the Commission determined that Powerex's "presence as a seller in the NorthWestern balancing authority area can only be viewed as pro-competitive."[16] Additionally, the Commission noted that Powerex owned no generation assets in the US and controlled through contract only a "very small market share (around 5 percent) of the uncommitted generation in the Northwestern control area."[17]

The Commission noted further that there was no evidence of binding transmission constraints for flows going from west to east in the NorthWestern system, and thus it was "reasonable to assume that for the provision of such a small load (50 MW) there are a variety of sellers between Powerex and NorthWestern that could have provided this service."[18] The Commission observed the approximately 2000 MW of available economic capacity in the NorthWestern balancing authority area during most periods of the year.[19]

Additionally, the Commission found that Powerex's provision of services to NorthWestern under the 2008 Reserves Agreement did not raise any of the market power concerns highlighted in the Commission's order in *Avista Corporation*[20] setting forth the Commission's standards for provision of ancillary services at market-based rates.[21] In particular, there was no evidence that Powerex attempted to withhold these services from the market, Powerex was not the transmission provider in the NorthWestern balancing authority area, and there was no evidence that Powerex could erect barriers to entry.[22]

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[15] *Id.* at P 26. Powerex notes that the output of the Hardin generating plant has subsequently been increased to 107 MW.

[16] *Id.*

[17] *Id.* at P 28.

[18] *Id.* at P 27.

[19] *Id.*

[20] *Avista Corp.*, 87 FERC ¶ 61,223 at 61,883, *order on reh'g*, 89 FERC ¶ 61,136 (1999) ("*Avista*").

[21] November 28, 2007 Order at P 28.

[22] *Id.*

2. The 2009 Reserves Agreement

Powerex and NorthWestern subsequently negotiated and executed a nearly identical agreement for a two-year term from January 1, 2009 through January 6, 2011 ("2009 Reserves Agreement"), which the Commission accepted on November 14, 2008.[23] Under the 2009 Reserves Agreement, Powerex provided NorthWestern with 40 MW of Regulating Reserve Service, plus an additional 10 MW of service for the period April 30 through July 15 of each year. Pricing for the base contract quantity was fixed at an annualized lower price than the 2008 Reserves Agreement, at $8.90/kW-month, plus the cost of firm transmission across the British Columbia and BPA systems, provided that the total cost of the capacity and transmission could not exceed $15/kW-month. The contract also provided that the parties could mutually agree to increase the quantity of Regulating Reserve Services, with prices for this incremental amount varying from the base quantity price of $8.90/kW-month up to $12.90/kW-month.

Similar to the 2008 Reserves Agreement, the 2009 Reserves Agreement provided a unidirectional regulating reserve service and the intention of the parties that the energy transactions net to near zero. NorthWestern operated around a set-point equal to half the contract's Regulating Reserve Capacity and supplied Balancing Energy back to Powerex that, over time, was intended to net out with the Regulating Reserve Energy that Powerex delivered to NorthWestern.

In support of the 2009 Reserves Agreement, Powerex submitted a market power analysis that confirmed that the agreement did not result in an exercise of market power by Powerex.[24]

The Commission accepted the 2009 Reserves Agreement in an order issued November 14, 2008.[25] In that order, the Commission found that the agreement was "unlikely to result in the exercise of market power in the Regulating Reserve Services market in the NorthWestern balancing authority area."[26]

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[23] November 14, 2008 Order.

[24] *See Powerex Corp.*, Executed Agreement for Regulating Reserve Service, Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule, and Request for Expedited Treatment, Attachment A, Report of Carol C. Opatrny, filed in Docket No. ER08-1525-000 (Sept. 12, 2008) ("Opatrny Report").

[25] *See* November 14, 2008 Order.

[26] *Id.* at P 23.

3. The Current Regulating Reserves Agreement

The current BOY Agreement is nearly identical to the 2008 and 2009 Reserves Agreements accepted by the Commission,[27] but at a lower capacity price than either of the two prior longer-term agreements.

In particular, Powerex will provide NorthWestern up to 76 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge ("Capacity Charge") ranging from $8.00/kW-month to $12.00/kw-month depending on the MW provided.[28] Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and BPA transmission systems; however, the sum of the capacity charge and the transmission charge shall not exceed $15.00/kW-month unless mutually agreed by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system.

As it did in the 2008 and 2009 Regulating Reserve Agreements, NorthWestern will operate around a set-point that is half the Regulating Reserve Capacity to be provided under the Agreement. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission. The parties generally intend that the energy provided by each party will net out to near zero.

Powerex and NorthWestern have executed the BOY Agreement in contemplation that NorthWestern may require some level of service through the end of the year. The BOY Agreement is therefore nearly identical to the BOM Agreement filed in Docket No. ER12-984; in fact, it is intended to be an extension of that agreement based on the same circumstances. The Commission approved Powerex's request for waiver on February 3, 2012.

The structure and services provided are nearly identical to the terms the Commission reviewed and found acceptable in each of the three prior dockets. The negotiated market price for the BOY services is set at a lower rate for the contract quantity than the rate the Commission previously found acceptable and sufficiently competitive in 2008 and 2009. And section 3.1(1) of the BOY Agreement permits NorthWestern to reduce the quantity of Regulating Reserve Service, up to a complete reduction to zero, should

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[27] NorthWestern participated in filings at the Commission for both the 2008 and 2009 arrangements, seeking Commission approval of the contracts as a rate schedule under Section 205 of the FPA. Pursuant to Schedule 3 of its OATT, NorthWestern will post copies of this contract on OASIS.

[28] The Capacity Charge will be $8.00/kw-month for up to 30 MW, $10.00/kw-month for 30-60 MW and $12.00/kw-month for above 60 MW.

NorthWestern resume the ability to self-provide the service or otherwise identify a more viable solution. Thus, there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service under the BOY Agreement.

III.
REQUEST FOR WAIVER

A. Request for Waiver of Section 1 of Powerex's Market-Based Rate Schedule

In order for Powerex to sell Regulating Reserve Service to NorthWestern under the BOY Agreement, as described above, Powerex requests that the Commission grant a waiver of the provision in Section 1 of Powerex's FERC Rate Schedule No. 1, which limits Powerex's ability to make sales of ancillary services to public utilities that are obtaining such services to fulfill their own OATT obligations to provide such services to their customers.

Good cause exists for the Commission to grant Powerex's requested waiver. The Commission has previously granted Powerex waivers to provide market-based sales of Regulating Reserve Service to NorthWestern,[29] and service is provided here under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. The Commission has also granted a similar waiver in *Dynegy Power Marketing, Inc.*[30] Further, the BOY Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation and Frequency Response Service to its customers under Schedule 3 of its OATT. Provision of service under the Agreement is otherwise consistent with the Commission's stated objective of encouraging competitive ancillary service markets.

Moreover, as with the 2008 and 2009 arrangements, the BOY Agreement presents no market power concerns:

- Powerex continues to own no generation in the US and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant). As coal-fired generation without Automatic Generation Control, this resource is not suitable to provide Regulating Reserve Service. Powerex has not attempted to withhold this service from the market, is

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[29] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22.

[30] *See Dynegy Power Marketing, Inc.*, 118 FERC ¶ 61,094, *order on reh'g and clarification*, 120 FERC ¶ 61,278 (2007); *Dynegy Power Marketing, Inc.*, 123 FERC ¶ 61,127 (2008).

not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry.

- The terms and conditions of service mirror those for which the Commission granted previous waivers in 2008 and 2009.

- The pricing specified in the BOY Agreement is lower than the price under which NorthWestern obtained these services in 2008 and 2009.

- NorthWestern has the right to unilaterally decrease the volume of regulating reserves supplied under this arrangement, from the present 76 MW to any even-megawatt quantity down to 0 MW, should it procure other services or restore the DGGS to service during the contract's term.

B. Request for Waiver of Prior Notice Requirement

If the Commission considers the BOY Agreement under FPA § Section 205(c), waiver of the 60-day prior notice requirement is appropriate under FPA § 205(d) and Commission precedent, given the extraordinary circumstances and the continued need for NorthWestern to obtain this service to ensure reliability and to provide Schedule 3 service to its customers. Section 205(d) expressly confers on the Commission the discretion to grant waiver of the 60-day prior notice requirement:

> The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.[31]

The Commission has found such good cause to exist and has granted previous requests for waiver of the 60-day prior notice requirement in extraordinary circumstances, e.g., where agreements were "required to compensate sellers for critical generation services needed to assure reliability (at mitigated prices) . . . ."[32] As the Commission has recognized, these types of agreements "do not always lend themselves to being filed 60 days before service commenced."[33] Under *Central Hudson Gas and Electric Corp.*, the Commission is required to balance the need to deter violations of the FPA filing requirements with the requirement that rates not be

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[31] 16 U.S.C. § 824d(d).

[32] *ISO New England Inc.*, 112 FERC ¶ 61,057 at P 14 (2005) (*citing Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 (2003)).

[33] *Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 at P 15.

confiscatory.[34] And as discussed above, extraordinary circumstances exist here and justify Powerex's submitting this Agreement less than 60 days prior to service commencing.

IV.
REQUEST FOR EXPEDITED TREATMENT

Powerex requests that the Commission consider this filing on an immediate and expedited emergency basis and to issue an order granting waiver as soon as feasibly possible.

In particular, Powerex requests a shortened notice period, and a Commission ruling on or before February 24, 2012. Because the arrangements to provide such service are costly, the BOY Agreement permits Powerex to terminate the arrangement if the Commission declines to grant Powerex's requested waiver, or alternatively if no Commission ruling has issued by that date. A Commission ruling by February 24, 2012 provides assurance that will allow Powerex to mitigate the risk associated with making the transmission arrangements necessary to assure continued and uninterrupted delivery of Regulating Reserve Services to NorthWestern commencing March 1, 2012. This in turn will permit service NorthWestern to continue to provide reliable service on its transmission system.

V.
CONCLUSION

For the reasons set forth above, Powerex respectfully requests that the Commission grant its request for expedited treatment, and grant by February 24, 2012 the waiver of Section 1 of its FERC Rate Schedule No. 1 requested herein, effective March 1, 2012.

Respectfully submitted,

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Counsel for Powerex Corp.

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[34] *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

cc: Steve Rodgers, Director, Division of Electric Power Regulation-West
Deborah Leahy, Associate General Counsel, Energy Markets-2
Demetra Anas, Chief, Investigations Branch 1
Federal Energy Regulatory Commission

John Irving
Mike MacDougall
Karen McDonald
Powerex Corp.

Michael Cashell
Andrew McLain
NorthWestern Energy

#3976291.05

APPENDIX A

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 7th day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"BCHA"** means the British Columbia Hydro and Power Authority.

1.4 **"BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section 7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 **"PPT"** means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February 24, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe*

Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 **Regulating Reserve Services.** During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
76 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Contracted Capacity quantity for: (i) March and April 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative

arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012 until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties mutually determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long-Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long-Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge" and shall be applicable to each month of the Term)(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15.00/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of

Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff, policy or dynamic limitation restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of

Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load or resources on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity").

With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this

Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A. Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 <u>Credit Provisions</u>

(1) If NWE has a material negative change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB

$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia

V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: _____

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: _____

Title: **Robert C. Rowe**
President & Chief Executive Officer

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

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13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: Theresa Conway

Title: PRESIDENT & CEO

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: _____

Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Long Term Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

APPENDIX B

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

) **Docket No. ER12-___**

AFFADAVIT OF MICHAEL R. CASHELL ON BEHALF OF NORTHWESTERN ENERGY

In support of this filing, NorthWestern offers this affidavit to describe its present and immediate need for short-term replacement regulation services and the extraordinary circumstances that gave rise to this need.

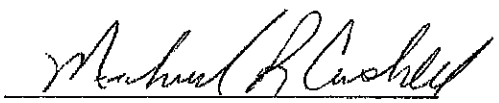
In 2010, NorthWestern constructed the Dave Gates Generating Station ("DGGS") to provide regulation and frequency response service. NorthWestern is required to offer such service under Schedule 3 of its open access transmission tariff ("OATT"). NorthWestern built DGGS for the sole purpose of providing regulation service to NorthWestern's wholesale and bundled retail customers. DGGS became operational on January 1, 2011, and since then DGGS has provided NorthWestern's only source of regulation services.

On January 31, 2012 at 8:10 pm, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units at DGGS to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system. While NorthWestern is currently coping with the limited resources it has available, if these

circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as impact the Western interconnected system.

Immediately, NorthWestern began soliciting potential third party providers to attempt to procure short-term regulation services to backstop NorthWestern's imminent needs. Powerex responded very quickly.

NorthWestern is doing all that it can to ensure that DGGS is operational as soon as possible; however, it is unknown at this time how long it will take to bring the plant back up to full output. In the meantime, it is essential that the Commission authorize the sale of services contemplated by this filing to ensure the continued reliable operation of the NorthWestern transmission system, to ensure continued service to customers and to ensure that there is not a negative impact to the Western interconnected system.



Mike Cashell

Vice President – Transmission

NorthWestern Corporation

40 East Broadway

Butte, MT 59701

Phone: 406-497-4575

Facsimile: 406-497-2150

Moran, Connie C

From: CASHELL, MICHAEL R
Sent: Tuesday, February 07, 2012 2:53 PM
To: McGowan, Michael
Subject: FW: FERC Acceptance for Filing of Powerex Request for Expedited Waiver of MBR Rate Schedule in ER12-1015-000
Attachments: Powerex Feb. 7, 2012 Request for Waiver.pdf

Mike Cashell
Vice President - Transmission
NorthWestern Energy
W (406) 497-4575
C (406) 490-4011
Michael.cashell@northwestern.com

Executive Assistant
Gayle Hunt
406-497-3247
Gayle.Hunt@northwestern.com

-----Original Message-----
From: MacDougall, Mike [mailto:Mike.MacDougall@powerex.com]
Sent: Tuesday, February 07, 2012 12:06 PM
To: CASHELL, MICHAEL R; McLain, Andrew
Subject: FW: FERC Acceptance for Filing of Powerex Request for Expedited Waiver of MBR Rate Schedule in ER12-1015-000

Hi guys,
The second filing is in. The docket info is below.

Mike.

-----Original Message-----
From: Bradley, Tracey [mailto:Tracey.Bradley@bgllp.com]
Sent: Tuesday, February 07, 2012 10:32 AM
To: Aitken, Meredith; MacDougall, Mike; McDonald, Karen; Irving, John K.; Lam, Jeff; Ratzlaff, Jay; Holman, Mark
Cc: Fox, Paul; King, Deanna; Davis, Tracy; Pierson, Joy
Subject: FW: FERC Acceptance for Filing of Powerex Request for Expedited Waiver of MBR Rate Schedule in ER12-1015-000

Here is the acceptance for filing email. Our docket number is ER12-1015 for this proceeding.

-----Original Message-----
From: eFiling@ferc.gov [mailto:eFiling@ferc.gov]
Sent: Tuesday, February 07, 2012 1:29 PM
To: Bradley, Tracey; eFiling@ferc.gov
Subject: FERC Acceptance for Filing in ER12-1015-000

Acceptance for Filing

The FERC Office of the Secretary has accepted the following electronic submission for filing (Acceptance for filing does not constitute approval of any application or self-certifying notice):

-Accession No.: 201202075067
-Docket(s) No.: ER12-1015-000
-Filed By: Powerex Corp.
-Signed By: Deanna King
-Filing Type: Tariff Filing
-Filing Desc: Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment under ER12-1015.
-Submission Date/Time: 2/7/2012 12:43:55 PM -Filed Date: 2/7/2012 12:43:55 PM

Your submission is now part of the record for the above Docket(s) and available in FERC's eLibrary system at:

http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20120207-5067

If you would like to receive e-mail notification when additional documents are added to the above docket(s), you can eSubscribe by docket at:

https://ferconline.ferc.gov/eSubscription.aspx

There may be a 10 minute delay before the document appears in eLibrary.

Thank you again for using the FERC Electronic Filing System. If you need to contact us for any reason:

E-Mail: efiling@ferc.gov mailto:efiling@ferc.gov (do not send filings to this address) Voice Mail: 202-502-8258.

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-PowerexDisclaimerID5.2.8.1541

BRACEWELL & GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
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Deanna E. King
Partner

512.494.3612 Office
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Bracewell & Giuliani LLP
111 Congress Avenue
Suite 2300
Austin, TX
78701-4061

February 7, 2012

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Powerex Corp.*, Docket No. ER12-___-000

Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d (2006), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2011), Powerex Corp. ("Powerex") hereby respectfully requests a limited waiver of Section 1 of its market-based rate schedule ("FERC Rate Schedule No. 1") in order to provide NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern"), with up to 76 MW of Regulating Reserve Service under an Agreement dated February 7, 2012 ("Balance of the Year ("BOY") Agreement").[1] This BOY Agreement is intended to provide NorthWestern with the ability to extend the service provided by Powerex under a February 2, 2012 balance-of-month arrangement ("BOM Agreement") reviewed by the Commission on Friday, February 3, 2012 in Docket No. ER12-984-000.[2]

[1] A copy of the February 7, 2012 BOY Agreement is attached as Appendix A.

[2] On February 2, 2012, as corrected in an errata filed on February 3, 2012, Powerex filed a request for a retroactive waiver of Section 1 of its FERC Rate Schedule No. 1 in connection with an interim BOM agreement between Powerex and NorthWestern that would immediately supply NorthWestern with the needed service as soon as it was technically feasible. Service commenced February 3, 2012 and, under the terms of the BOM Agreement, will last until

Powerex further requests that this waiver be made effective March 1, 2012, the date Powerex is scheduled to commence service at NorthWestern's request, and that the waiver terminate on January 8, 2013, coincident with the agreement's expiry.

Powerex seeks expedited Commission action because of NorthWestern's demonstrated pressing need to obtain Regulating Reserve Service in order to provide the service it is required to offer under Schedule 3 – Regulation and Frequency Response Service of its Open Access Transmission Tariff ("OATT"). Powerex requests that the Commission act on the request for the limited waiver by February 24, 2012 to allow Powerex time to mitigate the costs associated with the transmission and associated arrangements that have been put in place to provide the service should the requested waiver not be granted.

As explained below, good cause exists for the Commission to grant a limited waiver of this provision to authorize Powerex to make market-based sales to NorthWestern under the BOY Agreement, which is substantially the same service Powerex was previously authorized to provide NorthWestern in 2008 and 2009.[3]

The BOY Agreement does not raise market power concerns. This BOY Agreement is identical in structure and similar in term to the agreement for which the Commission has twice waived Powerex's Section 1 restriction.[4] The proposed price for the services Powerex is to provide under this BOY Agreement is at a lower rate than that of those 2008 and 2009 agreements. And further, the BOY Agreement specifically provides that NorthWestern has the unilateral right to reduce service under the BOY Agreement, subject only to notification of Powerex, should it find that it needs less service or the service is no longer necessary.

February 29, 2012. This Commission granted the emergency waiver on February 3, 2012. *See Powerex Corp.*, 138 FERC ¶ 61,099 (2012).

[3] *See NorthWestern and Powerex Corp.*, 121 FERC ¶ 61,204 (2007) ("November 28, 2007 Order"); *Powerex Corp. and NorthWestern Corp.*, 125 FERC ¶ 61,179 (2008) ("November 14, 2008 Order").

[4] *See* November 28, 2007 Order and November 14, 2008 Order.

I.
CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications in this proceeding should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

Karen McDonald
Senior Trade Policy Analyst
Powerex Corp.
666 Burrard Street, Suite 1400
Vancouver, British Columbia
Canada V6C 2X8
Phone: (604) 891-5000
Fax: (604) 891-5015
karen.mcdonald@powerex.com

Deanna E. King
Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Phone: (512) 472-7800
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deanna.king@bgllp.com

Tracey L. Bradley
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2000 K Street, N.W., Suite 500
Washington, D.C. 20006
Phone: (202) 828-5848
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tracey.bradley@bgllp.com

Tracy C. Davis
Bracewell & Giuliani LLP
701 Fifth Avenue, Suite 6200
Seattle, WA 98104
Phone: (206) 204-6223
Fax: (206) 204-6284
tracy.davis@bgllp.com

II.
BACKGROUND

A. Description of Parties to the Agreement

1. Description of Powerex

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign Sovereign Immunities Act.[5] Powerex sells power at wholesale in the United States from a portfolio of resources, including capability from BC Hydro system resources, the

[5] 28 U.S.C. §§ 1602, *et seq.*

Canadian Entitlement made available under the Columbia River Treaty, and power acquired from other sellers within the United States and Canada.

Powerex makes wholesale sales in the United States pursuant to market-based rate authority originally granted by the Commission in 1997 and most recently reaffirmed by letter order dated July 26, 2007.[6] In its most recent order approving Powerex's continued authority to sell at market-based rates, the Commission reaffirmed that Powerex continues to lack generation market power in its relevant destination markets, as well as to lack transmission market power and any ability to erect barriers to entry. Powerex has qualified as a Category 1 seller under the Commission's regulations.[7]

Under Section 1 of Powerex's FERC Rate Schedule No. 1, Powerex is authorized to make sales of ancillary services at market-based rates within certain organized markets and also bilaterally, subject to certain conditions imposed upon sellers by the Commission in Order No. 697.[8] Section 1 of Powerex's FERC Rate Schedule No. 1 permits Powerex to provide ancillary services based on bilateral negotiations with counterparties, but provides that Powerex shall not make market-based rate sales of ancillary services to a public utility that is purchasing those services to satisfy its OATT requirements to offer ancillary services to its own customers.[9]

2. Description of NorthWestern

As noted in prior filings with the Commission, NorthWestern owns and operates transmission and distribution facilities in Montana under which it serves customers in the western two-thirds of the state. NorthWestern provides regulated transmission service under its OATT. On January 1, 2011, NorthWestern commenced commercial

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[6] *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, issued in Docket No. ER97-4024-012 (Sept. 12, 2000) (unpublished letter order); *Powerex Corp.*, issued in Docket No. ER01-48-002 (Oct. 30, 2003) (unpublished letter order); *Powerex Corp.*, issued in Docket No. ER01-48-007 (July 26, 2007) (unpublished letter order).

[7] *See Powerex Corp.*, Letter Order issued in Docket No. ER01-48-018 (Oct. 29, 2010).

[8] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,252 at PP 1058-62, *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,268, *order on clarification*, Order No. 697-B, 124 FERC ¶ 61,055 (2008) (modifying its 1999 ruling in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,163).

[9] *See* Powerex Corp., FERC Rate Schedule No. 1, at Section 1 (effective Sept. 30, 2010) (unpublished Letter Order issued Feb. 14, 2011 in Docket No. ER11-2664-000).

operation of the Mill Creek Generating Station, now known as the Dave Gates Generating Station ("DGGS"), a natural gas-fired generating station near Anaconda, MT.[10] DGGS is used to provide regulation and frequency response service to NorthWestern's transmission customers, as required in Schedule 3 of the NorthWestern OATT.

B. NorthWestern's Present Need for Regulating Reserve Service

On February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to the 2008 and 2009 arrangements Powerex and NorthWestern had negotiated and the Commission had approved. NorthWestern informed Powerex that its need was immediate, that time was of the essence, and that NorthWestern required the Agreement to commence no later than February 3, 2012.

NorthWestern and Powerex subsequently confirmed that the appropriate telemetry and other operational requirements were in place to permit the provision of such service.

Attached as Appendix B to this filing is the Affidavit of Michael R. Cashell, Vice President – Transmission for NorthWestern. This Affidavit was also attached as an Exhibit to the BOM Agreement filed in Powerex's errata on Friday, February 3, 3012 in Docket No. ER12-984-000, at which time NorthWestern was without any resources to provide regulation.[11] While NorthWestern has currently satisfied its regulation needs,

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[10] Previously, NorthWestern had been relying on contracts with third parties to provide ancillary services in order to maintain its system reliability in accordance with various Commission and North American Electric Reliability Council ("NERC") requirements, as well as to provide the ancillary services required under its OATT. To fulfill these obligations, Northwestern has obtained Regulating Reserve Services from various third parties, including Powerex.

[11] The transmittal letter in Docket No. ER12-984-000 describes NorthWestern's immediate need. Citing Mr. Cashell's affidavit, the filing letter states:

> "On the evening of January 31, 2012, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units. The shutdown was required to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system.
>
> While NorthWestern is currently coping with the limited resources it has available, if these circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of

the BOM Agreement, which the Commission accepted on February 3, 2012, expires at the end of February. Since NorthWestern does not yet know the extent of the forced outage at DGGS or precisely when it will be able to begin to bring DGGS back into service, it requires the additional capacity contemplated by the BOY Agreement to ensure reliable service to its customers.

It is essential that the Commission authorize the sale of the Regulating Reserve Service as described in this filing so that NorthWestern can continue to provide reliable electric service.

As a result of NorthWestern's urgent and extraordinary need, as explained below, Powerex and NorthWestern negotiated two agreements for Powerex's provision of Regulating Reserve Service:

- A 27-day agreement for immediate service, to commence at HE1 on Friday, February 3, 2012 and extend through February 29, 2012, which was filed with the Commission for immediate review and action on an emergency basis; and

- An agreement extending the service some ten additional months, from March 1, 2012 through January 8, 2013, with quantities subject to adjustment or reduction by NorthWestern – to be filed with the Commission for expedited review and action.

As demonstrated by the statement of Mr. Cashell, NorthWestern's need constitutes an extraordinary circumstance.

C. The BOY Agreement Mirrors Previous Powerex-NorthWestern Agreements for Regulating Reserve Services

As explained below, the regulating reserve service arrangement NorthWestern sought from Powerex on February 1, 2012 generally mirrors the service arrangements NorthWestern obtained from Powerex in 2008 and in 2009.

1. The 2008 Reserves Agreement

In 2007, the Commission accepted an agreement between Powerex and NorthWestern under which Powerex would provide Regulating Reserve Service to NorthWestern from January 1, 2008 through December 31, 2008 ("2008 Reserves Agreement").[12] Under

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NorthWestern's system as well as impact the Western interconnected system. As a result, NorthWestern began to contact potential third-party providers to procure short-term Regulating Reserve Service to backstop NorthWestern's imminent needs. Powerex responded very quickly to NorthWestern's request."

[12] *See* November 28, 2007 Order.

this agreement, Powerex was obligated to provide 50 MW of Regulating Reserve Capacity for twelve months at a price of $9.40/kW-month and to provide an additional 10 MW for the period May 1, 2008 to July 15, 2008 at a price of $14.00/kw-month, plus a fixed fee for firm transmission service between the British Columbia and NorthWestern systems.[13]

The 2008 Reserves Agreement was structured such that the parties could regulate both "up" and "down", i.e., by allowing NorthWestern to operate around a set-point of approximately half the total Regulating Reserve Capacity. In each hour, Powerex used eastbound firm transmission service to deliver Regulating Reserve Capacity and Energy to NorthWestern, while NorthWestern used westbound, non-firm transmission service to deliver Balancing Energy back to Powerex. The 2008 Reserves Agreement provided that Powerex and NorthWestern would net the Reserve Energy and Balancing Energy, and that any excess energy transferred from one party to the other after netting would be settled financially and priced at the Dow Jones Mid-Columbia ("Mid-C") Daily Firm On-Peak or Off-Peak Index price, as applicable ("Mid-C Index Price"). The parties contemplated that the agreement would generally be energy-neutral.

Thus, the 2008 Reserves Agreement involved three distinct components:

- A Regulating Reserves Capacity product;
- A set of offsetting sales of energy provided by Powerex and NorthWestern; and
- Powerex reservations and scheduling over transmission between the British Columbia and NorthWestern systems, along with dynamic telemetry arrangements over such transmission systems.

In accepting the 2008 Reserves Agreement, the Commission granted a request by Powerex for waiver of its Section 1 of its FERC Rate Schedule No. 1 to permit the service to be provided.[14] The Commission found no evidence that Powerex had market power in the provision of ancillary services in the NorthWestern balancing authority area. In support of this finding, the Commission noted that "Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of the output of

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[13] The 2008 Reserves Agreement provided for an additional $5.60/kW-month to cover transmission charges incurred by Powerex for firm transmission service across the British Columbia Transmission Corporation (now the BC Hydro) and Bonneville Power Administrative ("BPA") transmission systems.

[14] November 28, 2007 Order at Ordering PP (A) and (B).

the 107 MW Hardin generating plant in Montana under a long-term agreement";[15] however, the Hardin resource is not capable of providing regulation service, and thus, the Commission determined that Powerex's "presence as a seller in the NorthWestern balancing authority area can only be viewed as pro-competitive."[16] Additionally, the Commission noted that Powerex owned no generation assets in the US and controlled through contract only a "very small market share (around 5 percent) of the uncommitted generation in the Northwestern control area."[17]

The Commission noted further that there was no evidence of binding transmission constraints for flows going from west to east in the NorthWestern system, and thus it was "reasonable to assume that for the provision of such a small load (50 MW) there are a variety of sellers between Powerex and NorthWestern that could have provided this service."[18] The Commission observed the approximately 2000 MW of available economic capacity in the NorthWestern balancing authority area during most periods of the year.[19]

Additionally, the Commission found that Powerex's provision of services to NorthWestern under the 2008 Reserves Agreement did not raise any of the market power concerns highlighted in the Commission's order in *Avista Corporation*[20] setting forth the Commission's standards for provision of ancillary services at market-based rates.[21] In particular, there was no evidence that Powerex attempted to withhold these services from the market, Powerex was not the transmission provider in the NorthWestern balancing authority area, and there was no evidence that Powerex could erect barriers to entry.[22]

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[15] *Id.* at P 26. Powerex notes that the output of the Hardin generating plant has subsequently been increased to 107 MW.

[16] *Id.*

[17] *Id.* at P 28.

[18] *Id.* at P 27.

[19] *Id.*

[20] *Avista Corp.*, 87 FERC ¶ 61,223 at 61,883, *order on reh'g*, 89 FERC ¶ 61,136 (1999) ("*Avista*").

[21] November 28, 2007 Order at P 28.

[22] *Id.*

2. The 2009 Reserves Agreement

Powerex and NorthWestern subsequently negotiated and executed a nearly identical agreement for a two-year term from January 1, 2009 through January 6, 2011 ("2009 Reserves Agreement"), which the Commission accepted on November 14, 2008.[23] Under the 2009 Reserves Agreement, Powerex provided NorthWestern with 40 MW of Regulating Reserve Service, plus an additional 10 MW of service for the period April 30 through July 15 of each year. Pricing for the base contract quantity was fixed at an annualized lower price than the 2008 Reserves Agreement, at $8.90/kW-month, plus the cost of firm transmission across the British Columbia and BPA systems, provided that the total cost of the capacity and transmission could not exceed $15/kW-month. The contract also provided that the parties could mutually agree to increase the quantity of Regulating Reserve Services, with prices for this incremental amount varying from the base quantity price of $8.90/kW-month up to $12.90/kW-month.

Similar to the 2008 Reserves Agreement, the 2009 Reserves Agreement provided a unidirectional regulating reserve service and the intention of the parties that the energy transactions net to near zero. NorthWestern operated around a set-point equal to half the contract's Regulating Reserve Capacity and supplied Balancing Energy back to Powerex that, over time, was intended to net out with the Regulating Reserve Energy that Powerex delivered to NorthWestern.

In support of the 2009 Reserves Agreement, Powerex submitted a market power analysis that confirmed that the agreement did not result in an exercise of market power by Powerex.[24]

The Commission accepted the 2009 Reserves Agreement in an order issued November 14, 2008.[25] In that order, the Commission found that the agreement was "unlikely to result in the exercise of market power in the Regulating Reserve Services market in the NorthWestern balancing authority area."[26]

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[23] November 14, 2008 Order.

[24] *See Powerex Corp.*, Executed Agreement for Regulating Reserve Service, Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule, and Request for Expedited Treatment, Attachment A, Report of Carol C. Opatrny, filed in Docket No. ER08-1525-000 (Sept. 12, 2008) ("Opatrny Report").

[25] *See* November 14, 2008 Order.

[26] *Id.* at P 23.

3. The Current Regulating Reserves Agreement

The current BOY Agreement is nearly identical to the 2008 and 2009 Reserves Agreements accepted by the Commission,[27] but at a lower capacity price than either of the two prior longer-term agreements.

In particular, Powerex will provide NorthWestern up to 76 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge ("Capacity Charge") ranging from $8.00/kW-month to $12.00/kw-month depending on the MW provided.[28] Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and BPA transmission systems; however, the sum of the capacity charge and the transmission charge shall not exceed $15.00/kW-month unless mutually agreed by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system.

As it did in the 2008 and 2009 Regulating Reserve Agreements, NorthWestern will operate around a set-point that is half the Regulating Reserve Capacity to be provided under the Agreement. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission. The parties generally intend that the energy provided by each party will net out to near zero.

Powerex and NorthWestern have executed the BOY Agreement in contemplation that NorthWestern may require some level of service through the end of the year. The BOY Agreement is therefore nearly identical to the BOM Agreement filed in Docket No. ER12-984; in fact, it is intended to be an extension of that agreement based on the same circumstances. The Commission approved Powerex's request for waiver on February 3, 2012.

The structure and services provided are nearly identical to the terms the Commission reviewed and found acceptable in each of the three prior dockets. The negotiated market price for the BOY services is set at a lower rate for the contract quantity than the rate the Commission previously found acceptable and sufficiently competitive in 2008 and 2009. And section 3.1(1) of the BOY Agreement permits NorthWestern to reduce the quantity of Regulating Reserve Service, up to a complete reduction to zero, should

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[27] NorthWestern participated in filings at the Commission for both the 2008 and 2009 arrangements, seeking Commission approval of the contracts as a rate schedule under Section 205 of the FPA. Pursuant to Schedule 3 of its OATT, NorthWestern will post copies of this contract on OASIS.

[28] The Capacity Charge will be $8.00/kw-month for up to 30 MW, $10.00/kw-month for 30-60 MW and $12.00/kw-month for above 60 MW.

NorthWestern resume the ability to self-provide the service or otherwise identify a more viable solution. Thus, there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service under the BOY Agreement.

III.
REQUEST FOR WAIVER

A. Request for Waiver of Section 1 of Powerex's Market-Based Rate Schedule

In order for Powerex to sell Regulating Reserve Service to NorthWestern under the BOY Agreement, as described above, Powerex requests that the Commission grant a waiver of the provision in Section 1 of Powerex's FERC Rate Schedule No. 1, which limits Powerex's ability to make sales of ancillary services to public utilities that are obtaining such services to fulfill their own OATT obligations to provide such services to their customers.

Good cause exists for the Commission to grant Powerex's requested waiver. The Commission has previously granted Powerex waivers to provide market-based sales of Regulating Reserve Service to NorthWestern,[29] and service is provided here under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. The Commission has also granted a similar waiver in *Dynegy Power Marketing, Inc.*[30] Further, the BOY Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation and Frequency Response Service to its customers under Schedule 3 of its OATT. Provision of service under the Agreement is otherwise consistent with the Commission's stated objective of encouraging competitive ancillary service markets.

Moreover, as with the 2008 and 2009 arrangements, the BOY Agreement presents no market power concerns:

- Powerex continues to own no generation in the US and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant). As coal-fired generation without Automatic Generation Control, this resource is not suitable to provide Regulating Reserve Service. Powerex has not attempted to withhold this service from the market, is

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[29] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22.

[30] *See Dynegy Power Marketing, Inc.*, 118 FERC ¶ 61,094, *order on reh'g and clarification*, 120 FERC ¶ 61,278 (2007); *Dynegy Power Marketing, Inc.*, 123 FERC ¶ 61,127 (2008).

not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry.

- The terms and conditions of service mirror those for which the Commission granted previous waivers in 2008 and 2009.

- The pricing specified in the BOY Agreement is lower than the price under which NorthWestern obtained these services in 2008 and 2009.

- NorthWestern has the right to unilaterally decrease the volume of regulating reserves supplied under this arrangement, from the present 76 MW to any even-megawatt quantity down to 0 MW, should it procure other services or restore the DGGS to service during the contract's term.

B. Request for Waiver of Prior Notice Requirement

If the Commission considers the BOY Agreement under FPA § Section 205(c), waiver of the 60-day prior notice requirement is appropriate under FPA § 205(d) and Commission precedent, given the extraordinary circumstances and the continued need for NorthWestern to obtain this service to ensure reliability and to provide Schedule 3 service to its customers. Section 205(d) expressly confers on the Commission the discretion to grant waiver of the 60-day prior notice requirement:

> The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.[31]

The Commission has found such good cause to exist and has granted previous requests for waiver of the 60-day prior notice requirement in extraordinary circumstances, e.g., where agreements were "required to compensate sellers for critical generation services needed to assure reliability (at mitigated prices) . . . ."[32] As the Commission has recognized, these types of agreements "do not always lend themselves to being filed 60 days before service commenced."[33] Under *Central Hudson Gas and Electric Corp.*, the Commission is required to balance the need to deter violations of the FPA filing requirements with the requirement that rates not be

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[31] 16 U.S.C. § 824d(d).

[32] *ISO New England Inc.*, 112 FERC ¶ 61,057 at P 14 (2005) (*citing Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 (2003)).

[33] *Mirant Americas Energy Marketing, L.P., et al.*, 105 FERC ¶ 61,039 at P 15.

confiscatory.[34] And as discussed above, extraordinary circumstances exist here and justify Powerex's submitting this Agreement less than 60 days prior to service commencing.

IV.
REQUEST FOR EXPEDITED TREATMENT

Powerex requests that the Commission consider this filing on an immediate and expedited emergency basis and to issue an order granting waiver as soon as feasibly possible.

In particular, Powerex requests a shortened notice period, and a Commission ruling on or before February 24, 2012. Because the arrangements to provide such service are costly, the BOY Agreement permits Powerex to terminate the arrangement if the Commission declines to grant Powerex's requested waiver, or alternatively if no Commission ruling has issued by that date. A Commission ruling by February 24, 2012 provides assurance that will allow Powerex to mitigate the risk associated with making the transmission arrangements necessary to assure continued and uninterrupted delivery of Regulating Reserve Services to NorthWestern commencing March 1, 2012. This in turn will permit service NorthWestern to continue to provide reliable service on its transmission system.

V.
CONCLUSION

For the reasons set forth above, Powerex respectfully requests that the Commission grant its request for expedited treatment, and grant by February 24, 2012 the waiver of Section 1 of its FERC Rate Schedule No. 1 requested herein, effective March 1, 2012.

Respectfully submitted,

/s/ Deanna E. King
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Counsel for Powerex Corp.

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[34] *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

cc: Steve Rodgers, Director, Division of Electric Power Regulation-West
Deborah Leahy, Associate General Counsel, Energy Markets-2
Demetra Anas, Chief, Investigations Branch 1
Federal Energy Regulatory Commission

John Irving
Mike MacDougall
Karen McDonald
Powerex Corp.

Michael Cashell
Andrew McLain
NorthWestern Energy

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APPENDIX A

AGREEMENT FOR REGULATING RESERVE SERVICES BETWEEN NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND POWEREX CORP.

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this 7th day of February, 2012 and effective March 1, 2012 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 "**Agreement**" shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 "**Balancing Energy**" has the meaning set forth in Section 4.1.

1.3 "**BCHA**" means the British Columbia Hydro and Power Authority.

1.4 "**BCHA Transmission Path**" means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 "**BPA**" means the Bonneville Power Administration, Transmission Services.

1.6 "**BPA Transmission Path**" means firm point-to-point service from the BC/US Border to BPAT.

1.7 "**Balancing Energy Delivery Point**" has the meaning set forth in Section 4.3.

1.8 "**Bankrupt**" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 **"Collateral Threshold"** has the meaning set forth in Section 7.3.

1.11 **"Contracted Capacity"** has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.3.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes.

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 **"PPT"** means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s).

1.28 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.29 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.30 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.31 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.32 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.33 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.34 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.35 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.36 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.37 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013 (the "Term").

2.2 **Approvals.** The obligations of the Parties for service under this Agreement, as set forth in subsection 3.1 are conditional upon FERC's granting of a request by Powerex for waiver of the limitation in its Rate Schedule No. 1 on sales of ancillary services to a public utility that is purchasing those services to satisfy open access transmission tariff requirements to offer ancillary services to its own customers. In the event that FERC does not grant this requested waiver by February 24, 2012 or it conditions any waiver on terms or conditions that are unacceptable to either Party in its sole discretion, Powerex shall have the right to terminate the Agreement upon notice to NWE prior to the scheduled commencement of service.

In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party or FERC acting *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe*

Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S.(2010). The standard of review for changes to this Agreement proposed by a third party shall be the most stringent standard permissible under applicable law.

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 **Regulating Reserve Services.** During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

Regulating Reserve Capacity	Time Period
76 MW	HE 01 PPT March 1, 2012 through HE 24 PPT January 8, 2013

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3) and pursuant to Section 3.8(1).

NWE shall have the option to reduce the Contracted Capacity quantity for: (i) March and April 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice. NWE may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1). The Parties may agree to resume a higher quantity upon mutual agreement only as set out in Section 3.1(8).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: In the event that quantity of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative

arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path beyond April 30, 2012 until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties mutually determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCHA and BPA systems. In the event the required BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth in the following table for providing Regulating Reserve Capacity (the "Capacity Charge")

Up to 30 MW	30 to 60 MW	Above 60 MW
$8.00/kw-month	$10.00/kw-month	$12.00/kw-month

plus,

(ii) the BCHA Long-Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long-Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge" and shall be applicable to each month of the Term)(current transmission costs are detailed in EXHIBIT B).

However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15.00/kW-month.

NWE shall be responsible for the all costs associated with the NWE Transmission Path.

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of

Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

(8) Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity (subject to the applicable Regulating Reserve Capacity Price). In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 **Good Utility Practice.** Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 **Equipment.** Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or BCHA tariff, policy or dynamic limitation restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of

Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load or resources on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.** In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity").

With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 **Balancing Energy Delivery Point.** The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 **Balancing Energy Price.** Powerex shall pay NWE the following for the Balancing Energy:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; and
(ii) the then applicable BCHA hourly PTP rate plus ancillary services plus losses.

4.5 **Failure to Deliver Balancing Energy.** For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this

Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 **Failure to Receive Balancing Energy.** For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank
Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account

Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.00 CAD$: 1.00 US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material negative change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB

$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB-
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.3 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.3(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.3(1) and not section 7.3(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia

V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.4104 Fax . 406.497.4209

11.3 **Delivery.** Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 **Uncontrollable Force.** Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 **Continued Obligation to Pay.** No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 **Headings.** The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: _____

Title: _____

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN ENERGY

By: _____

Title: **Robert C. Rowe**
President & Chief Executive Officer

13.3 **Waiver.** A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 **Severability.** If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.

By: Teresa Conway

Title: PRESIDENT & CEO

NORTHWESTERN CORPORATION
doing business as NORTHWESTERN
ENERGY

By: _____

Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from BCHA to NWE. The resultant Delivery signal would result in BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

BCHA Transmission Services Rates:

Description of Service	**BCHA Posted Rate as of Execution Date**	**BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$3.912/kW-month	US$3.912/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.0956/kW-month	US$0.0956/kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.602/kW-month	US$0.602/kW-month

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Long Term Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.00/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF INCREASED REGULATING RESERVE CAPACITY

Upon completion of this Form of Acknowledgement of Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Month(s)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

APPENDIX B

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

) **Docket No. ER12-___**

AFFADAVIT OF
MICHAEL R. CASHELL
ON BEHALF OF NORTHWESTERN ENERGY

In support of this filing, NorthWestern offers this affidavit to describe its present and immediate need for short-term replacement regulation services and the extraordinary circumstances that gave rise to this need.

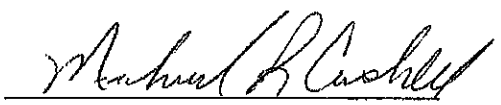
In 2010, NorthWestern constructed the Dave Gates Generating Station ("DGGS") to provide regulation and frequency response service. NorthWestern is required to offer such service under Schedule 3 of its open access transmission tariff ("OATT"). NorthWestern built DGGS for the sole purpose of providing regulation service to NorthWestern's wholesale and bundled retail customers. DGGS became operational on January 1, 2011, and since then DGGS has provided NorthWestern's only source of regulation services.

On January 31, 2012 at 8:10 pm, NorthWestern was unexpectedly required to completely shut down the DGGS facility due to significant equipment damage on each of the three generating units at DGGS to prevent potentially catastrophic damage to the plant's power turbines. Since NorthWestern does not have any other generation sources that can provide regulation services, NorthWestern does not presently have any means to regulate its system. While NorthWestern is currently coping with the limited resources it has available, if these

circumstances are allowed to continue much longer, this lack of regulation capacity could jeopardize NorthWestern's provision of reliable electric service to its customers and could impact the reliable operation of NorthWestern's system as well as impact the Western interconnected system.

Immediately, NorthWestern began soliciting potential third party providers to attempt to procure short-term regulation services to backstop NorthWestern's imminent needs. Powerex responded very quickly.

NorthWestern is doing all that it can to ensure that DGGS is operational as soon as possible; however, it is unknown at this time how long it will take to bring the plant back up to full output. In the meantime, it is essential that the Commission authorize the sale of services contemplated by this filing to ensure the continued reliable operation of the NorthWestern transmission system, to ensure continued service to customers and to ensure that there is not a negative impact to the Western interconnected system.



Mike Cashell

Vice President – Transmission

NorthWestern Corporation

40 East Broadway

Butte, MT 59701

Phone: 406-497-4575

Facsimile: 406-497-2150

Moran, Connie C

From: McGowan, Michael
Sent: Wednesday, February 01, 2012 9:54 AM
To: 'meredith.aitken@powerex.com'
Cc: Johnston, Casey E; McGowan, Michael
Subject: NWMT RFP Redline
Attachments: Pwx-NorthwesternRegulatingReserveServicesAgreement Feb 2012 REDLINE v3.docx

Importance: High

Meredith,

Attached is the DRAFT of the agreement for Regulation as we discussed. Some talking points we would like to discuss is of course the MW amount you can offer, along with a discussion on the Term. I am still piecing together the amounts we are going to ultimately need, so we will need to have a further discussion on that. In the redline we have the service through April 2012, with extensions through Jan. 31, 2013 if needed. We have addressed increasing capacity in the contract, but will also need to have a discussion with PowerEx about decreasing the amount needed (ramp down) over time.

Please review and I we can talk some more about this later today. We would like to try to get filings, etc. done as soon as today or tomorrow if it is a possibility.

Again thank you for your help on this and elevating its importance.

Michael McGowan
Manager, Electric Transmission Services
NorthWestern Energy
40 E. Broadway
Butte, MT 59701
w: (406) 497-4184
c: (406) 533-8000

**AGREEMENT FOR
REGULATING RESERVE SERVICES
BETWEEN
NORTHWESTERN CORPORATION, DOING BUSINESS AS
NORTHWESTERN ENERGY
AND
POWEREX CORP.**

THIS REGULATING RESERVE SERVICES AGREEMENT, executed this ~~5th~~2nd day of ~~September~~February, 200812 and effective ~~January 1~~February 3, 200912 between NorthWestern Corporation, doing business as NorthWestern Energy, a Delaware corporation ("NWE"), and Powerex Corp., a British Columbia corporation ("Powerex"). The parties may hereinafter collectively be referred to as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Powerex is an energy marketer located in Vancouver, British Columbia;

WHEREAS, NWE or its affiliates is currently engaged in the transmission, distribution and sale of electric power and energy in the State of Montana;

WHEREAS, NWE desires to acquire certain Regulating Reserve services from Powerex; and

WHEREAS, Powerex is willing to provide certain Regulating Reserve services to NWE pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby undertake, promise and agree, as follows:

ARTICLE 1 – DEFINITIONS

1.1 **"Agreement"** shall mean this Agreement for Regulating Reserve Services between NWE and Powerex.

1.2 **"Balancing Energy"** has the meaning set forth in Section 4.1.

1.3 **"~~BCTC~~BCHA"** means the British Columbia Transmission Corporation.

1.4 **"~~BCTC~~BCHA Transmission Path"** means firm point-to-point transmission service from BC network to the BC/US Border.

1.5 **"BPA"** means the Bonneville Power Administration, Transmission Services.

1.6 **"BPA Transmission Path"** means firm point-to-point service from the BC/US Border to BPAT.

1.7 **"Balancing Energy Delivery Point"** has the meaning set forth in Section 4.3.

1.8 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.9 **"Business Day"** shall mean any day except Saturday, Sunday, a Federal Reserve Bank holiday or a Canadian bank holiday observed in Vancouver, British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 "**Collateral Threshold**" has the meaning set forth in Section 7.4.

1.11 "**Contracted Capacity**" has the meaning set forth in Subsection 3.1(1).

1.12 **"Credit Rating"** shall mean, with respect to any entity, the rating then assigned by Moody's, S&P or any other rating agency agreed by the parties to such entity's unsecured, senior long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating.

1.13 **"Delivery Hour"** shall mean a clock hour ending at :00 minutes of the next succeeding hour in which Regulating Reserve Energy or Balancing Energy is delivered under this Agreement.

1.14 **"Downgrade Event"** has the meaning set forth in section 7.4.

1.15 **"FERC"** shall mean the Federal Energy Regulatory Commission or its successor agency.

1.16 **"Good Utility Practice"** shall mean any practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, expedition and the requirements of governmental agencies having jurisdiction. 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 a range of possible practices, methods, or acts generally accepted in the region.

1.17 **"Index Rate"** shall be: (i) the Dow Jones Mid-Columbia Daily Firm On-Peak Index for Hours Ending ("HE") 07 through 22 Pacific Prevailing Time ("PPT") Monday through Saturday excluding NERC holidays; (ii) the Dow Jones Mid-Columbia Daily Firm Off-Peak Index for HE 1 through 6, 23 and 24 PPT Monday through Saturday excluding NERC holidays; and (iii) the Dow Jones Mid-Columbia Daily Firm Index 24 HR for HE 1 through 24 PPT Sundays and NERC holidays. If the Dow Jones index becomes unavailable or is discontinued, the Parties agree to negotiate in good faith a mutually agreeable replacement index for pricing purposes..

1.18 **"Letter of Credit"** shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to Powerex in its reasonable discretion. Costs of the Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.19 **"Letter of Credit Default"** means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit ceases to be a Qualified Institution, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of

any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purpose of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement; (v) the issuer of such Letter of Credit becomes Bankrupt; or (vi) the issuer of the Letter of Credit shall fail to cause the renewal or replacement Letter of Credit to the Secured Party at the address specified in the Agreement at least fifteen (15) Local Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the pledgor in accordance with the terms of this Agreement.

1.20 **"Moody's"** shall mean Moody's Investors Service, Inc. or its successor.

1.21 **"NWE Transmission Path"** means the transmission capacity necessary to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT.

1.22 **"Off-Peak"** means HE 1 through 6 and HE 23 through 24 PPT Monday through Saturday excluding NERC holidays and HE 1 through 24 PPT on Sundays and NERC Holidays.

1.23 **"On-Peak"** means HE 7 through 22 PPT Monday through Saturday excluding NERC holidays.

1.24 **"Outage Management Protocol"** means the protocol relating to the communication and management of technical issues relating to outages in the systems required to provide Regulating Reserve Services hereunder, as agreed to between the Parties from time to time.

1.25 **"Performance Assurance"** shall mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Powerex.

1.26 "PPT" means Pacific Prevailing Time.

1.27 **"Preschedule Day"** shall mean the calendar day as defined by the WECC Preschedule Calendar on which trading occurs for the applicable delivery day(s)

1.28 "Q1" means January through March; "Q2" means April through June; "Q3" means July through September; and "Q4" means October through December.

1.29 **"Qualified Institution"** means a commercial bank or trust company (which is not an affiliate of either party) organized under the laws of the United States or Canada (or any state, province or political subdivision thereof) having assets of at least U.S.$10 billion and a long term debt or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P, which institution is acceptable to the receiving party.

1.30 **"Regulating Reserve Capacity"** means the provision of capacity and energy resources that are on-line and loaded at less than the maximum output, pursuant to NERC and WECC criteria and available to respond to instantaneous changes in load.

1.31 **"Regulating Reserve Energy"** means energy delivered to NWE as part of the provision of the Regulating Reserve Services by Powerex under this Agreement.

1.32 **"Regulating Reserve Service"** means the making available of capacity and energy in order to instantaneously respond to moment-by-moment changes in load plus firm transmission on the transmission path needed to connect load with the Regulating Reserve resource.

1.33 **"Regulating Reserve Energy Delivery Point"** shall mean, the BPA/NWE interface (BPAT.NWMT).

1.34 **"Replacement Price"** means the price at which Powerex, acting in a commercially reasonable manner, effects a purchase of substitute energy in place of the energy not delivered by NWE or, absent such a purchase, the market price for such quantity of energy, as determined by Powerex in a commercially reasonable manner.

1.35 **"Sales Price"** means the price at which NWE, acting in a commercially reasonable manner, effects a resale of the energy not received by Powerex or, absent such a resale, the market price for such quantity of energy, as determined by NWE in a commercially reasonable manner.

1.36 **"S&P"** shall mean Standard and Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.37 **"Uncontrollable Forces"** shall be as defined in Article 12 of this Agreement.

1.38 **"WECC"** means the Western Electricity Coordinating Council, or any successor entity thereto.

ARTICLE 2 – TERM AND EFFECTIVE DATE

2.1 **Term of Transaction.** This Agreement shall continue in effect beginning Hour Ending ("HE") 01 PPT ~~January 1~~February 3, 20091~~2~~ through HE 12 PPT ~~January 6~~April 30, 2012~~11~~ (the "Term"). The Parties may mutually agree to extend the Term of this Agreement on a month to month basis however, in no event shall the Term extend past January 31, 2013~~2~~. In the event the Parties extend the Term all other terms and conditions of the Agreement shall remain the same.

2.2 **Approvals.** Powerex and NWE will jointly file this Agreement with the FERC in accordance with Section 205 of the Federal Power Act. The obligations of the Parties for service under this agreement are conditional upon FERC's acceptance for filing or approval without change of the terms and conditions herein. In the event that FERC does not approve of this Agreement or approves it on conditions that are unacceptable to either Party in its sole discretion, the Parties' obligations hereunder shall terminate effective as of the date of the FERC order disapproving or conditionally approving this Agreement. In the event such 205 filing is protested or opposed by a third party, or if during the term of this Agreement a third party ~~or FERC acting~~ *sua sponte* challenges or seeks to change any rate, charge, term or condition of this Agreement, the Parties will make all reasonable efforts to defend against such challenge or requested change in any regulatory and judicial proceeding, or in any arbitration.

Each Party, with regard to this Agreement only, irrevocably waives any rights it may have, including, but not limited to any rights under §§205-206 of the *Federal Power Act*, to unilaterally file a complaint, request an investigation, make a rate-change request, or take any other unilateral action, seeking: (i) an order from FERC finding that the market-based rate(s) or the terms and conditions agreed to by the Parties pursuant to this Agreement are unjust and unreasonable or contrary to the public interest; or (ii) any change or refund with respect to such rate(s); or (iii) any change with respect to such terms and conditions, and each Party agrees that it will not make such a unilateral filing or take such a unilateral action.

Both Parties agree to support and defend any filing necessary to implement a mutually agreed-on change to any rate, charge, term or condition of this Agreement.

~~Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party, a third party or FERC acting *sua sponte*, shall be the "public interest" standard of review originally set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "*Mobile Sierra*" doctrine), and as affirmed in *Morgan Stanley Capital Group Inc. v. Public Utility Dist. No. 1 of Snohomish County, et al.*, 554 U.S. -- (June 26, 2008).~~

The waivers and obligations of this section shall continue to be binding on each Party notwithstanding any rule, regulation, administrative or judicial decision or order, or change in circumstances or market conditions, that may occur during the term of this Agreement.

ARTICLE 3 – AMOUNTS, CONDITIONS AND SCHEDULING OF REGULATING RESERVE SERVICES

3.1 Regulating Reserve Services. During the term of this Agreement, subject to the rates, terms and conditions herein, Powerex shall make available to NWE and NWE shall purchase from Powerex Regulating Reserve Services as described below:

(1) Regulating Reserve Capacity: Powerex shall make the following quantity of Regulating Reserve Capacity available to NWE for the corresponding time period:

	Regulating Reserve Capacity	Time Period
(i)	~~40~~75 MW	HE 01 PPT ~~January 1~~February 3, 2009~~12~~ through HE ~~24~~11 PPT April 30, 201~~209~~
~~(ii)~~	~~50 MW~~	~~HE 12 PPT April 30, 2009 through HE 11 PPT July 15, 2009~~
~~(iii)~~	~~40 MW~~	~~HE 12 PPT July 15, 2009 to HE 11 PPT April 30, 2010~~
~~(iv)~~	~~50 MW~~	~~HE 12 PPT April 30, 2010 through HE 11 PPT July 15, 2010~~
~~(v)~~	~~40 MW~~	~~HE 12 PPT July 15, 2010 to HE 11 PPT January 6, 2011~~

and NWE shall purchase such quantity from Powerex (the "Contracted Capacity"), provided however, that the Contracted Capacity shall be reduced to equal the reserved transmission that may result from the Regulating Reserve Transmission Path Procurement pursuant to Section 3.1(3).

(2) Regulating Reserve Transmission Path: Subject to Section 3.1 (3), Powerex shall acquire firm transmission rights on the (i) ~~BCTC~~BCHA Transmission Path in an amount equal to the maximum Contracted Capacity, and (ii) BPA Transmission Path in an amount equal to the maximum Contracted Capacity for the Term of this Agreement. NWE shall be responsible to assure that transmission capacity is available to receive the Contracted Capacity at the interface of the NWE transmission system with BPA at BPAT.NWMT in an amount equal to the Contracted Capacity for the Term of this Agreement.

(3) Regulating Reserve Transmission Path Procurement: The Parties agree that Powerex shall ~~not be obligated to~~ procure, redirect or demonstrate existing transmission rights for the required quantity of firm transmission rights on the ~~BCTC~~BCHA~~ABCHA~~ Transmission Path ~~or~~and BPA Transmission Path, ~~until such time as FERC approval is obtained and (i) such approval is unconditional or (ii) both Parties have confirmed that they accept the conditions imposed by the FERC in accordance with Section 2.2. Powerex shall, within ten (10) Business Days after the satisfaction of (i) or (ii) above, perform one or a combination of the following actions to secure 40MW of the BCTC~~BCHA~~ Transmission Path and 40MW of the BPA Transmission Path for the period January 1, 2009 through December 31, 2010.~~

~~(a) submit its request to purchase yearly firm transmission capacity;~~
~~(b) submit its request to redirect yearly firm transmission capacity, or~~
~~(c) demonstrate it has existing yearly firm transmission rights that shall be dedicated to meet Powerex's transmission service obligations under this Agreement.~~

In the event that ~~4075~~ MW of capacity is not available for reservation or redirect, Powerex shall use commercially reasonable efforts to acquire the maximum available quantity in order to satisfy as much of the Contracted Capacity as possible. ~~If at any point from the date of FERC approval through December 31, 2010 the BCTCBCHA or the BPA Transmission Paths become available the~~ The Parties may mutually agree to acquire or redirect such transmission up to the original contemplated Contracted Capacity. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

~~With respect to the incremental 10 MW of Contracted Capacity for the period May 1through July 15, Powerex shall not be obligated to acquire or redirect the BCTCBCHA and BPA Transmission Path until such time as monthly reservations are allowed on the BCTCBCHA and BPA transmission systems. In the event such transmission is unavailable, each of the Parties shall be relieved of its obligations under this Agreement with respect to the incremental 10 MW of Contracted Capacity.~~

~~With respect to the period of January 1, 2011 through January 6, 2011, Powerex shall not be obligated to acquire or redirect the BCTCBCHA and BPA Transmission Path beyond December 31, 2010 until such time as daily reservations are allowed on the BCTCBCHA and BPA systems. In the event the required BCTCBCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.~~

In the event the term of this agreement is extended pursuant to Section 2.1, Powerex shall not be obligated to acquire or redirect the ~~BCTC~~BCHA and BPA Transmission Path beyond ~~January 6, 2011~~April 30, 2012 until such time as monthly reservations are allowed on the ~~BCTC~~BCHA and BPA systems. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

Pursuant to Section 3.1 (8) "Increase in Regulating Reserve Energy", if the Parties increase the quantity of Regulating Reserve Service, Powerex shall not be obligated to acquire or redirect the ~~BCTC~~BCHA and BPA Transmission Path until such time as monthly reservations are allowed on the ~~BCTC~~BCHA and BPA systems. In the event the required ~~BCTC~~BCHA Transmission Path or the BPA Transmission Path are unavailable for reservation or redirect, the Parties agree to work together in good faith to determine whether alternative acceptable transmission arrangements can be made. In the event that the parties determine that acceptable alternative arrangements are not available, both Parties shall be relieved of further obligation under this Agreement the Parties shall be relieved of the obligations under this agreement.

(4) Regulating Reserve Capacity Price: NWE shall pay Powerex the sum of:

(i) the amount set forth below for providing Regulating Reserve Capacity (the "Capacity Charge"): ~~$8.99~~9.00/kWmonth, plus

Comment [mm1]: PWX update applicable price

(ii) the ~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service Rate plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services plus,

(iii) the BPA Long Term Firm Point-to-Point Transmission Service plus Scheduling, System Control and Dispatch Service plus Reactive Supply and Voltage Control from Generation Sources Services (items (ii) and (iii) shall be referred to collectively as the "Transmission Charge")(current transmission costs are detailed in EXHIBIT B).

~~However, in no case shall the sum of the Capacity Charge plus the Transmission Charge exceed $15.00/kW-month for the Regulating Reserve Capacity defined in Section 3.1. In the event the Regulating Reserve Capacity is increased subject to Section 3.1 (8) the sum of the Capacity Charge plus the Transmission Charge may exceed $15/kW-month.~~
~~NWE shall be responsible for the all costs associated with the NWE Transmission Path.~~

(5) Regulating Reserve Energy: Powerex shall provide the Regulating Reserve Energy by way of deliveries to NWE each hour at the Regulating Reserve Energy Delivery Point in the amount of 0 MW to a positive amount equal to the Contracted Capacity, as adjusted as a result of NWE generation request signal, pursuant to Exhibit A – Technical Data. In no event shall deliveries of Regulating Reserve Energy be less than 0 MW (i.e. result in deliveries to Powerex) or greater than the Contracted Capacity. ~~BCTC~~BCHA shall provide the Parties a summary of the energy amounts that are delivered from Powerex to NWE for each hour.

(6) Regulating Reserve Energy Price: For each hour in which Powerex delivers Regulating Reserve Energy to NWE hereunder, NWE shall pay Powerex an amount equal to the amount of Regulating Reserve Energy delivered to NWE in such hour multiplied by the Regulating Reserve Energy Price which shall be determined as follows: the Regulating Reserve Energy Price shall equal: (i) the Index Rate applicable to such hour; plus (ii) all actual costs of transmitting such quantity of Regulating Reserve Energy on the ~~BCTC~~BCHA Transmission Path, including but not limited to, ancillary services charged on a usage basis and not covered in subsection 3.1(4) above and losses; plus (iii) all costs of transmitting such quantity of Regulating Reserve Energy on the BPA Transmission Path, including but not limited to, ancillary services charged on a usage basis and losses. The parties acknowledge that each of ~~BCTC~~BCHA and BPA charge losses as a percentage of energy flow across its system multiplied by a published index price.

(7) Scheduling of Regulating Reserve Energy: Powerex shall be responsible for all scheduling and etagging of the Regulating Reserve Energy. Powerex shall comply with applicable WECC and NERC requirements.

~~(8)~~ Increase in Regulating Reserve Services: The Parties may mutually agree by completion of the Form of Acknowledgment as provided in Exhibit C to increase the Regulating Reserve Capacity~~, in accordance with the following table.~~

~~ime of Deliveries~~	~~uarter~~	~~ext 20 MW of Regulating Reserve Capacity ($/kW month)~~	~~ext 5 MW of Regulating Reserve Capacity ($/kW month)~~	~~ext 15 MW of Regulating Reserve Capacity ($/kW month)~~	~~ext 25 MW of Regulating Reserve Capacity ($/kW month)~~
~~n-Peak~~	~~1~~	~~0.90~~	~~2.90~~	~~2.90~~	~~/A~~
	~~2~~	~~.90~~	~~.90~~	~~0.90~~	~~2.90~~
	~~3~~	~~0.90~~	~~2.90~~	~~2.90~~	~~/A~~
	~~4~~	~~0.90~~	~~2.90~~	~~2.90~~	~~/A~~
~~ff-Peak~~	~~1~~	~~0.90~~	~~2.90~~	~~2.90~~	~~/A~~
	~~2~~	~~.90~~	~~.90~~	~~0.90~~	~~2.90~~
	~~3~~	~~0.90~~	~~2.90~~	~~2.90~~	~~/A~~
	~~4~~	~~0.90~~	~~2.90~~	~~2.90~~	~~/A~~

In the event the Parties agree to increase the Regulating Reserve Capacity, all other terms and conditions of the Agreement shall remain the same.

3.2 Good Utility Practice. Nothing in this agreement shall require either Party to risk harm to any persons and property. It is the intent of NWE and Powerex that the flow of energy between the Parties will be the result of NWE's need to provide Regulating Reserve Services on its system in a manner consistent with Good Utility Practice.

3.3 Equipment. Each Party shall be responsible to provide all equipment necessary to implement Regulating Reserve Services on their respective systems.

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3.4 **Curtailment for Domestic Load.** In the event that the provision of such Regulating Reserve Services would require curtailment of firm BC domestic load (including load treated as domestic load pursuant to treaty obligations), Regulating Reserve Services provided to NWE under this Agreement may be interrupted or curtailed. Powerex shall use best efforts to avoid such interruptions or curtailments.

3.5 **Transmission Curtailment.** The Parties acknowledge that the ~~BCTC~~BCHA Transmission Path, the BPA Transmission Path and the NWE Transmission Path are required to provide Regulating Reserve Services. In the event of a transmission curtailment the Regulating Reserve Services shall be curtailed in accordance with the transmission provider's curtailment priority business practices.

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3.6 **Technical Outages.** The Parties acknowledge that the provision of Regulating Reserve Services requires the operation of certain communication and technical systems, each of which may suffer outages from time to time. The Parties shall use best efforts to minimize such outages however, in the event of such an outage experienced by either Party, BPA or ~~BCTC~~BCHA, the Parties are relieved of their obligations to provide or receive such Regulating Reserve Services, during the duration of such outage.

3.7 **Outage Management.** In the event of a derate or suspension of Regulating Reserve Services for reasons outlined in sections 3.4, 3.5, and 3.6, the Parties shall comply with the Outage Management Protocol.

3.8 **Regulating Reserve Services Curtailment.**
(1) In the event that any BPA or ~~BCTC~~BCHA tariff or policy restricts the quantity of Regulating Reserve Services that Powerex may provide to NWE under this Agreement, the Contracted Capacity shall be reduced to the maximum quantity allowed and the quantity of Balancing Energy that NWE is obligated to deliver shall be reduced to one half of the reduced Contracted Capacity. Powerex shall not bear any responsibility or liability for such reduction.

(2) NWE acknowledges that BPA has imposed a dynamic scheduling limitation of 300 MW on the northern intertie, a portion of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total quantity of Regulating Reserve services that Powerex may provide to all parties in reliance on such entities' transmission systems below 300 MW, then Powerex has the right to reduce the Contracted Capacity such that the reduced Contracted Capacity made available to NWE in any hour is the same proportion of the maximum allowable dynamic scheduling volume imposed on Powerex that it was before the restriction was put in place.

(3) NWE acknowledges that BPA has imposed a dynamic scheduling ramp rate limitation on the northern intertie of 150MW/minute, 50MW/minute of which is committed to provide Regulating Reserve Services to NWE hereunder. In the event that BPA or ~~BCTC~~BCHA restricts the total ramp rate of dynamic scheduling services that Powerex may provide to all parties in reliance on such entities' transmission systems below 150 MW/minute, then Powerex has the right to reduce the ramp rate such that the reduced ramp rate made available to NWE in any hour is the same proportion of the maximum allowable ramp rate imposed on Powerex that it was before the restriction was put in place.

3.9 **Remedies.** In the event that, for any portion of a month, Powerex is unable to provide Regulating Reserve Services, for any reason, except when NWE is unable to accept such service, Powerex shall reduce the Capacity Charge on an hourly pro rata basis. Such adjustment shall be the exclusive remedy available to NWE for non-delivery by Powerex. This limitation of damages provision, however, shall not permit Powerex to suspend or restrict service provided hereunder solely for the purpose of Powerex's economic advantage, in which case NWE shall be allowed to

seek any and all available remedies. Further, this limitation of damages provision shall not relieve Powerex from its obligation to exercise reasonable best efforts to restore service in a timely manner.

3.10 **Use of Regulating Reserve Services.** The parties intend that the Regulating Reserve Services be used only to respond to instantaneous fluctuations in load on the NWE system in accordance with Prudent Utility Practices. NWE shall not be entitled to use the Regulating Reserve Service provided hereunder solely for the purpose of NWE's economic advantage, and in the event of such use by NWE, Powerex shall be allowed to seek any and all available remedies.

3.11 **Unallocated Transmission Costs.**

~~(a) In the event that, prior to the commencement of the Term, Powerex has reserved transmission as contemplated in Subsection 3.1(2) and 3.1(3) hereof and following such reservation the commencement of the Term is delayed as provided in Section 2.1 and provided that the delay or termination was outside of the control of Powerex, NWE shall reimburse Powerex for all costs of such transmission, to the extent that such costs are not compensated under Subsection 3.1(3) hereof. Powerex shall take commercially reasonable steps to mitigate any loss.~~

(b) In the event that the Contracted Capacity is reduced pursuant to Section 3.8, provided such reduction was outside the control of Powerex, NWE shall continue to pay the Transmission Charge (as defined in Subsection 3.1(4)) in respect of the original Contracted Capacity. Powerex shall take commercially reasonable steps to utilize any unused transmission capacity and NWE's costs under Section 3.1(4) shall be reduced by the amount of the benefit to Powerex from its use of such transmission capacity.

ARTICLE 4 – AMOUNTS, CONDITIONS AND SCHEDULING OF BALANCING ENERGY

4.1 **Balancing Energy.** The parties intend that the Regulating Reserve Service will result in deliveries of Regulating Reserve Energy to NWE that approximately average one half (1/2) of the Contracted Capacity in each hour over a period of time. It is the intent of the parties that that net deliveries over the contract period will be energy neutral. Accordingly, in each hour during the Term, NWE shall deliver and Powerex shall receive a quantity of energy ("Balancing Energy") equal to one half of the hourly Contracted Capacity ("Balancing Energy Quantity"). With respect to the Balancing Energy, NWE shall be required to meet the WECC/NWPP reserve obligations such that the Balancing Energy is firm for the delivery hour. NWE shall only be relieved of their obligation to provide Balancing Energy in the event of an Uncontrollable Force or in accordance with section 4.2 The Balancing Energy Quantity to be provided hereunder represents the Parties' best estimate of the quantity of Regulating Reserve Energy which may be delivered over the Term of the Agreement. Notwithstanding the foregoing, the parties acknowledge that the exact quantity of Regulating Reserve Energy which shall be delivered over the Term of this Agreement is unknown and that the aggregate deliveries of Balancing Energy may not exactly equal the aggregate deliveries of Regulating Reserve Energy over the Term. The Parties acknowledge that the Balancing Energy shall be delivered on non-firm transmission on the NWE system.

4.2 **Adjustment of Balancing Energy.** In the event that Regulating Reserve Services are suspended hereunder for any reason, NWE's obligation to deliver Balancing Energy shall be correspondingly suspended in accordance with the following:

(1) Either Party shall notify the other Party of the suspension in accordance with the Outage Management Protocol.

(2) NWE shall continue to make available and Powerex shall continue to receive Balancing Energy for the remainder of the then current Delivery Hour and will be suspended for the first hour following the hour of suspension.

(3) Upon the resumption of Regulating Reserve Services following a suspension, NWE shall recommence delivering Balancing Energy at the start of the Delivery Hour concurrent with the first full Delivery Hour after the resumption of Regulating Reserve Service; provided there is enough time under the normal scheduling and tagging procedures and provided further that the Parties may recommence delivery of Balancing Energy earlier on mutual agreement.

4.3 Balancing Energy Delivery Point. The Balancing Energy shall be delivered to any mutually agreed unconstrained delivery point on the NWE integrated transmission system ("Balancing Energy Delivery Point"). Powerex shall use best efforts to designate the Balancing Energy Delivery Point(s) at least 40 minutes prior, but in no event later than 30 minutes prior, to the commencement of the next Delivery Hour. Powerex shall use commercially reasonable efforts to provide expected Balancing Energy Delivery Point(s) on a preschedule basis. In the event that there is no unconstrained delivery point on the NWE integrated transmission system acceptable to Powerex, then, to the extent non firm transmission capacity is available, NWE shall deliver the Balancing Energy to BPAT.NWE interconnection point. In the event there is no non-firm capacity available for delivery at the BPAT.NWE interconnection point NWE shall not be obligated to deliver Balancing Energy to Powerex for such hour, and shall pay Powerex an amount determined under Section 4.5 below.

4.4 Balancing Energy Price. Powerex shall pay NWE the following for the Balancing Energy:

(1) For energy received by Powerex at BPAT and delivered to the BC Hydro system:

The Index Rate applicable to such hour minus:

(i) the then applicable BPA hourly PTP rate plus ancillary services plus losses; minus
(ii) the then applicable ~~BCTC~~BCHA hourly PTP rate plus ancillary services plus losses.

(2) For energy received by Powerex at BPAT and delivered to a point other than the BC Hydro system

The Index Rate applicable to such hour minus (the then applicable BPA PTP rates plus ancillary services plus losses).

(3) For energy received by Powerex on the NWE integrated transmission system:

The Index Rate applicable to such hour.

4.5 Failure to Deliver Balancing Energy. For any hour in which NWE fails to deliver Balancing Energy to Powerex, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then NWE shall pay Powerex the positive difference, if any, between the Balancing Energy Price and the Replacement Price. For the purpose of this Section 4.5, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.6 Failure to Receive Balancing Energy. For any hour in which Powerex fails to receive Balancing Energy from NWE, and such failure to deliver is not excused by an event of Uncontrollable Force (as defined in section 12 hereof), then Powerex shall pay NWE the positive difference, if any, between the Sales Price and the Balancing Energy Price. For the

purpose of this Section 4.6, the applicable Balancing Energy Price shall be that price determined in accordance with Subsection 4.4(1) above.

4.7 **Scheduling of Balancing Energy.** Powerex shall be responsible for all scheduling and etagging for the Balancing Energy.

ARTICLE 5 - LIMITATION OF LIABILITY

5.1 **LIMITATION OF LIABILITY.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY.

ARTICLE 6 – SETTLEMENTS AND PAYMENTS

6.1 **Energy Accounting.** For purposes of energy accounting and settlements between the Parties, the readings generated by ~~BCTC~~BCHA's automatic generation control equipment shall be the official record of the Regulating Reserve Energy delivered and received by Powerex and NWE. If such automatic generation control equipment fails, resulting in loss of record, the Parties shall first use Powerex's records, and if those records are not available, NWE's records and if those records are not available, then the Parties agree to work in good faith and to use any reasonable means available, including charts and historical quantity records, the determine the amounts of Regulating Reserve Energy delivered and received prior to the failure and during such failure.

6.2 **Settlements.** Powerex shall calculate the amount due to Powerex by NWE and the amount due NWE by Powerex at the end of each month. As soon as practicable after the end of each month, Powerex will render to NWE an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice,. If such payment due date is not a Business Day, then payment shall be due on the next Business Day. If the Parties are each required to pay an amount in the same billing period, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations, to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

As part of the monthly invoice delivered by Powerex each month, Powerex shall provide NWE with a statement for Balancing Energy and which hours the energy was delivered to the BC Hydro system for purposes of settlements as it pertains to Section 4.4 hereof.

6.3 **Invoices.** All invoices and payments shall be submitted as follows:

Billings to Powerex shall be sent to:

666 Burrard St., Suite 1400,
Vancouver, BC V6C 2X8
Attn: Finance Department
Phone: (604) 891-6063 Fax: (604) 891-6011

Payment to Powerex shall be sent to:

BANK: Wachovia Bank, N.A. – New York
ABA: 026005092
ACCT: 0004 4625 335
Beneficiary's Bank

Bank of Montreal, Int'l Banking H.O. Montreal
Account: 2000192009878 S.W.I.F.T. Code: BOFMCAM2

Billings to NWE shall be sent to:
NorthWestern Energy
40 East Broadway
Butte, MT
Attn: Transmission Marketing – SOCC
Phone: (406) 497-4250 Fax: (406) 497-2054

Payments made to NWE shall be sent to:

NorthWestern Corporation General Account	
Account Name:	NorthWestern Corporation General Account
Account Number:	153910224325
ABA#:	123000848
Swift:	USBKUS44IMT
Bank Name:	US BANK N.A.
	Minneapolis, MN 55402

6.4 **Audit.** Each Party will maintain all books, records, logs and metering and other information necessary to verify compliance with this Agreement, the quantity of Regulating Reserve and Balancing Energy delivered under this Agreement and the accuracy of invoices. A Party will have the right upon reasonable notice, and at its expense, to audit the books, records, logs and metering and other information of the other Party for the limited purposes of such verification.

6.5 **Currency.** All invoices and payments hereunder shall be rendered in US Dollars. To convert Canadian currency to US, the parties shall use a fixed exchange rate of 1.000.94 CAD$: ~~0.99591.0~~ US$ notwithstanding that the actual exchange rate may differ from this fixed rate during the Term.

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ARTICLE 7 – EVENTS OF DEFAULT; CREDIT

7.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(2) the failure to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligations to deliver or receive Regulating Reserve Energy or Balancing Energy, the exclusive remedies for which are provided in Article Three and Article Four respectively) if such failure is not remedied within three (3) Business Days after written notice;

(3) such Party becomes Bankrupt;

(4) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 7.3 or 7.4 hereof, or

(5) Letter of Credit Default.

7.2 **Effect of an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction described herein, (ii) to withhold any payments due to the Defaulting Party under this Agreement and (iii) to suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, its total Loss or Gain resulting from the early termination of this Agreement. The Non-Defaulting Party may net its total Gain or Loss against all other amounts owing between the parties under this Agreement (including all accounts receivable and all accrued but unpaid amounts). The net amount constitutes the "Liquidation Amount" payable within five (5) Business Days of the early termination date by the Defaulting Party or the Non-Defaulting Party, as applicable. Any dispute under this clause shall be referred to dispute resolution under Section 10.2. In this Section 7.2, "Gain" shall mean an amount equal to the present value of the economic benefit to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner and "Loss" shall mean an amount equal to the present value of the economic loss to it, if any resulting from the termination of the Agreement, determined in a commercially reasonable manner. In determining its Gain or Loss, a Party may have reference to internal or external information, including price quotes, information provided from third party information providers or arm's length transactions executed by such Party.

7.3 **Credit Provisions**

(1) If NWE has a material change in its creditworthiness or a Downgrade Event occurs under this agreement, Powerex may demand Performance Assurance, which shall be provided by NWE to Powerex by the end of the third Business Day after the demand is received.

(2) Powerex may demand Performance Assurance (which Performance Assurance shall be provided by the third Business Day after the demand is received by NWE) in an amount equal to the amount by which: (i) the Liquidation Amount that would be payable to Powerex calculated by Powerex in accordance with Section 7.2, as if an early termination date had occurred with respect to NWE exceeds (ii) the dollar amount that is equal to NWE's Collateral Threshold amount plus the value of the Performance Assurance previously provided to Powerex, if any on behalf of NWE. The amount of Performance Assurance provided hereunder shall be rounded up to the nearest integer of $100,000.

(3) The "Collateral Threshold" shall be with respect to NWE the following: the lowest of (i) the amount set forth in the following table opposite the lowest Credit Rating applicable to NWE and, (ii) zero if an Event of Default or Potential Event of Default has occurred with respect to NWE and is continuing.

Collateral Threshold (in thousands of U.S. dollars)	Credit Rating (Moody's)	Credit Ratings (S&P)
$10,000	A1 and above	A+ and above
$ 5,000	A2 or A3	A or A-
$ 3,000	Baa1 or Baa2	BBB+ or BBB
$ 2,500	Baa3; Ba1 or Ba2	BBB-; BB+ or BB
$ 500	Ba3	BB
$ 0	Below Ba3 or not rated	Below BB- or not rated

(4) It shall be a Downgrade Event for NWE if the credit rating of NWE falls below BB- from S&P or below Ba3 from Moody's.

(5) If at any time the value of Performance Assurance provided under this Section 7.4 exceeds the amount of Performance Assurance required to be provided to Powerex under Section 7.4(2) above, NWE may request the cancellation, return or reduction of such Performance Assurance to the extent of the excess, unless: (i) the Credit Support Obligations were provided under Section 7.4(1) and not section 7.4(2), or (ii) an Event of Default with respect to NWE has occurred and is continuing. Powerex shall return such Performance Assurance by the third Business Day after the request is received by NWE.

(6) If requested by Powerex, NWE shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. If however, such financial statements are available on a publicly available regulatory website (such as "EDGAR") or the home page of such entity, the other party shall be deemed to have received the most recent version of the financial statements that are posted on such website or home page.

ARTICLE 8 - ADMINISTRATION

8.1 **Operating Representatives.** The Parties agree to appoint representatives to secure effective cooperation and to deal on a prompt and orderly basis with the various operating and technical problems that may arise in connection with delivery of the Regulating Reserve services and Regulating Reserve compensation ("Operating Representatives").

8.2 **Procedures.** The establishment of any procedure or practices, and any other action or determination by the Operating Representatives shall be effective when agreed in writing and signed by the Operating Representatives of both Parties.

8.3 **Designation.** Each Party shall notify in writing the other Party promptly of the designation of its Operating Representatives and of any subsequent changes in such designation.

ARTICLE 9 – AMENDMENT, ASSIGNMENT

9.1 **Amendment.** This Agreement may be amended or changed only upon written agreement of the Parties.

9.2 **Assignment.** Neither Party shall assign this Agreement or any interest therein, without the prior written consent of the other Party, not to be unreasonably withheld. Either non-assigning Party may, upon learning of any pending assignment of this Agreement, require from the assignee, satisfactory evidence of the assignee's creditworthiness. Failure to supply such evidence in a timely manner shall be considered reasonable grounds for withholding consent to said assignment.

ARTICLE 10 – DISPUTE RESOLUTION, ARBITRATION

10.1 Any dispute between the Parties involving service under this Transaction shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon by mutual agreement, such

dispute shall be arbitrated and resolved in accordance with the arbitration procedures set forth below.

10.2 Any arbitration initiated under this Transaction shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure.

10.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Transaction and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) shall also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

10.4 Costs – Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs if applicable:

(1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
(2) one-half the cost of the single arbitrator jointly chosen by the Parties.

10.5 Notwithstanding the above, nothing in this Article shall be construed to operate as a waiver of Powerex's right under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, to remove to federal court for a non-jury adjudication any state court proceeding brought to enforce or appeal an arbitration determination.

ARTICLE 11 – NOTICES

11.1 **Notices - Powerex.** Any written notices to be given to Powerex under this Agreement shall be directed to:

Manager, Contracts
Powerex Corp.
1400 – 666 Burrard Street
Vancouver, British Columbia
V6C 2X8
Phone: (604) 891-6090
Fax: (604) 891-5025

11.2 **Notices – NWE** Any written notices to be given to NWE under this Agreement shall be directed to:

NorthWestern Energy Credit Manager 600 Market St. W Huron, SD 57350 Phone 605.353.7517 Fax 605.353.7569	NorthWestern Energy Director, SOCC Operations and Transmission ~~Marketing~~Services 40 E. Broadway Butte, MT, 59701 Phone 406.497.~~4575~~4104 Fax 406.497.~~2054~~4209

11.3 Delivery. Any notice, demand or request provided for in this Agreement or given in connection with this Agreement to either Party shall be deemed properly given or made if delivered in person, sent by facsimile or sent certified mail, return receipt requested to the individual and address designated above. Either Party may amend the individual and address to which subsequent notices are to be delivered by providing notice in the manner described in this paragraph.

ARTICLE 12 – UNCONTROLLABLE FORCE

12.1 Uncontrollable Force. Neither Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, terrorism, labor dispute, labor or material shortage, sabotage, restraint by court order of public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, then it shall be promptly followed by written notice.

12.2 Continued Obligation to Pay. No Party shall be relieved by operation of Section 12.1 of any liability to pay for power delivered to the other Party or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE 13 – MISCELLANEOUS

13.1 Governing Law. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York , as if executed and to be performed wholly within the State of New York.

13.2 Headings. The headings used in this Agreement are for convenience only and shall not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

13.3 Waiver. A waiver by either party of any default or breach by the other party of any covenants, terms or conditions of this Agreement shall not limit the right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

13.4 Severability. If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall continue to be effective.

13.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

13.6 **Amendments.** This Agreement shall not be modified, amended or changed in any respect except by a written document signed by all parties.

13.7 **Counterparts; Copies.** This Agreement may be executed in counterparts, which together shall constitute one instrument. Copies of this fully executed instrument shall have the same force and effect as the original.

13.8 **No Third Party Beneficiary.** This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

13.9 **Authority.** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

13.10 **Integration.** This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained or incorporated therein shall not be binding upon the parties

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

POWEREX CORP.	NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY
By: _____	By: _____
Title: ~~President & CEO~~	Title: _____

EXHIBIT A – TECHNICAL DATA

A.1 Request and Delivery Signals for Regulating Reserve Services:

NWE shall transmit a request signal to ~~BCTC~~BCHA via Inter Control Center Communications Protocols ("ICCP") datalink ("Request"). Notwithstanding other limitations contained in this Agreement, the Request shall not exceed +XX MW (where XX is the Contracted Capacity) or be less than 0 MW. It is NWE sole responsibility to limit the Request to the +XX MW (where XX is the Contracted Capacity) and 0 MW range.

~~BCTC~~BCHA shall return a delivery signal to NWE via ICCP datalink ("Delivery"). Both ~~BCTC~~BCHA and NWE shall incorporate the Delivery signal into their respective Area Control Error ("ACE") calculations. In the event a NWE Request exceeds +XX MW (where XX is the Contracted Capacity), ~~BCTC~~BCHA shall limit the Delivery signal to +XX MW (where XX is the Contracted Capacity). In the event NWE Request is less than 0 MW, ~~BCTC~~BCHA shall limit the Delivery signal to 0 MW.

A.2 Sign Conventions

A positive Request signal ("Out MW") is a request for MW to flow from ~~BCTC~~BCHA to NWE. The resultant Delivery signal would result in ~~BCTC~~BCHA's ACE moving in the negative direction, and the NWE ACE moving in the positive direction.

A.3 Calculation of the "Regulating Reserve Energy"

~~BCTC~~BCHA shall integrate the Delivery signal for each clock hour, and aggregate the MW delivered from Powerex to NWE. In the event the amount in a delivery hour is not a whole number, the value shall be truncated and the decimal portion shall be added to the subsequent delivery hour.

Powerex shall update the dynamic tag after the end of the hour with the appropriate MW hourly value.

EXHIBIT B – TRANSMISSION RATES (UPDATE)

The following rates are the transmission services rates in effect as of the date of execution. For greater certainty, the actual rates in effect during the term of this agreement shall be used. Pursuant to Section 6.5, a fixed $Cdn/$US exchange rate shall apply for the Term of this Agreement.

~~BCTC~~BCHA Transmission Services Rates:

Description of Service	**~~BCTC~~BCHA Posted Rate as of Execution Date**	**~~BCTC~~BCHA Rate in US$ Using the Exchange Rate in Section 6.5**
~~BCTC~~BCHA Long Term Firm Point-to-Point Transmission Service	Cdn$~~4.009~~3.912/kW-month	US$3.~~76893~~/kW-month
Scheduling, System Control and Dispatch Service	Cdn$0.~~094406~~/~~MW~~kW-month	US$0.~~1.009449~~/~~MW~~kW-month
Reactive Supply and Voltage Control from Generation Sources Services	Cdn$0.~~594825~~/~~MW~~kW-month	US$0.~~7765965~~/~~MW~~kW-month

Comment [mm3]: PWX verify rates. LT PTP rate calculated from $46,943/MW-YEAR. Reactive and Scheudling / Dispatch calculated from posted MW/Hr rates

Comment [mm4]: Exchange calculated at $1.00 CAD to $0.9958 USD

Comment [mm5]: Can we talk on BPA Reactive?

BPA Transmission Service Rates:

Description of Service	**Rate as of Execution Date**
BPA Monthly Firm Point-to-Point Transmission Service	$1.298/kWmonth
Scheduling, System Control and Dispatch Service	$0.203/kWmonth
Reactive Supply and Voltage Control from Generation Sources Services	$0.0040/kWmonth

EXHIBIT C – FORM OF ACKNOWLEDGEMENT OF EXTENSION OF TERM OR INCREASED REGULATING RESERVE CAPACITY (to discuss

Upon completion of this Form of Acknowledgement of Extension of Term or Increased Regulating Reserve Capacity, the Parties agree to increase the Regulating Reserve Capacity pursuant to Section 3.1 (8) of the Agreement, in accordance with the following table:

Time of Deliveries (On-Peak or Off-Peak)	Quarter (Q1, Q2, Q3 or Q4)	Regulating Reserve Capacity Quantity (MW)	Regulating Reserve Capacity Price ($/kW month)

Notwithstanding the above, all other terms and conditions of the Agreement shall apply.

Acknowledged:

POWEREX CORP.

By: _____

Title: _____

Date: _____

NORTHWESTERN CORPORATION doing business as NORTHWESTERN ENERGY

By: _____

Title: _____

Date: _____

Moran, Connie C

From: McGowan, Michael
Sent: Thursday, February 02, 2012 2:52 PM
To: Johnston, Casey E
Subject: FW: Draft Filing
Attachments: HOUSTON-#3975160-v1-Powerex_Petition_re_February_2012_Balance_of_Month_Regulating_Reserve_Service_Contract_with_NorthWestern.DOC.doc

Importance: High

From: CASHELL, MICHAEL R
Sent: Thursday, February 02, 2012 2:44 PM
To: McGowan, Michael
Subject: FW: Draft Filing
Importance: High

Mike Cashell
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NorthWestern Energy | CELEBRATING 1912 - 2012 BUILDING

From: MacDougall, Mike [mailto:Mike.MacDougall@powerex.com]
Sent: Thursday, February 02, 2012 2:44 PM
To: CASHELL, MICHAEL R; McLain, Andrew
Subject: Fw: Draft Filing
Importance: High

Hi Mike,
Here it is. I'm hoping its good to go.

Mike

From: Bradley, Tracey [mailto:Tracey.Bradley@bgllp.com]
Sent: Thursday, February 02, 2012 01:42 PM

To: MacDougall, Mike
Cc: King, Deanna <Deanna.King@bgllp.com>; Davis, Tracy <Tracy.Davis@bgllp.com>
Subject: Draft Filing

Here it is. Please distribute internally.

This email may contain information that is confidential. If you are not the intended recipient you may not distribute or copy this email or any attachments. If you have received this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.

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February 2, 2012

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Powerex Corp.*, Docket No. ER12-___-000

Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d (2006), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2011), Powerex Corp. ("Powerex") hereby respectfully requests a limited waiver of Section 1 of its market-based rate schedule ("FERC Rate Schedule No. 1") in order to provide NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern") with up to 70 MW of Regulating Reserve Service on an interim basis under an Agreement dated February 2, 2012. Powerex further requests that this waiver be made retroactive to February 3, 2012, the date Powerex is scheduled to commence service at NorthWestern's request.

This request for waiver is being made on an emergency basis, and Powerex seeks immediate and expedited Commission action because of NorthWestern's demonstrated pressing need to obtain Regulating Reserve Service in order to provide the service it is required to offer under Schedule 3 – Regulation and Frequency Response Service of its Open Access Transmission Tariff ("OATT"). Because Powerex has previously provided substantially the same service to NorthWestern in 2008 and 2009,[1] the parties

[1] *NorthWestern and Powerex Corp.*, 121 FERC ¶ 61,204 (2007) ("November 28, 2007 Order"); *Powerex Corp. and NorthWestern Corp.*, 125 FERC ¶ 61,179 (2008) ("November 14, 2008 Order").

negotiated and executed an interim balance-of-the-month ("BOM") agreement that would immediately supply NorthWestern with the needed service as soon as it was technically feasible. Service is scheduled to begin February 3, 2012 and under the terms of the Agreement, will last until February 29, 2012.

Section 1 of Powerex's FERC Rate Schedule No. 1 permits Powerex to provide ancillary services based on bilateral negotiations with counterparties, but provides that Powerex shall not make market-based rate sales of ancillary services to a public utility that is purchasing those services to satisfy its OATT requirements to offer ancillary services to its own customers.[2] As explained below, good cause exists for the Commission to grant a limited and retroactive waiver of this provision to authorize Powerex to make market-based sales to NorthWestern under this Agreement.

The BOM Agreement does not raise any market power concerns. This BOM Agreement is identical in structure to the agreement for which the Commission has twice waived Powerex's Section 1 restriction.[3] The proposed price for the services Powerex is to provide under this BOM Agreement is at a lower rate than that of the prior agreement. And further, the BOM Agreement specifically provides that its market-based pricing will take effect only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex will charge NorthWestern no rate ($0) for the capacity or energy services provided, and it will charge NorthWestern only for related transmission based on prices in place by the relevant transmission providers. Thus, there can be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Concurrent with this filing, Powerex and NorthWestern are presently negotiating a subsequent Regulating Reserve Service agreement that would be effective March 1, 2012 through April 30, 2012 (the "Term"), which Term may be extended upon mutually agreement on a month to month basis until January 31, 2013. Powerex will seek prior Commission authorization to make such sales. However, given the exigent circumstances and NorthWestern's urgent need for service, Powerex respectfully asks the Commission to approve the instant waiver request on the BOM Agreement retroactively, effective on the date service commenced, February 3, 2012.

Powerex respectfully requests an emergency and expedited order granting the requested and limited waiver, with Commission action as soon as feasibly possible.

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[2] *See* Powerex Corp., FERC Rate Schedule No. 1, at Section 1 (effective Sept. 30, 2010) (unpublished Letter Order issued Feb. 14, 2011 in Docket No. ER11-2664-000).

[3] *See* November 28, 2007 Order and November 14, 2008 Order.

I.
CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications in this proceeding should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

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tracy.davis@bgllp.com

III.
BACKGROUND

A. Description of Parties to the Agreement

1. Description of Powerex

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign Sovereign Immunities Act.[4] Powerex sells power at wholesale in the United States from a portfolio of resources, including capability from BC Hydro system resources, the Canadian Entitlement made available under the Columbia River Treaty, and power acquired from other sellers within the United States and Canada.

[4] 28 U.S.C. §§ 1602, *et seq.*

Powerex makes wholesale sales in the United States pursuant to market-based rate authority originally granted by the Commission in 1997 and most recently reaffirmed by letter order dated July 26, 2007.[5] In its most recent order approving Powerex's continued authority to sell at market-based rates, the Commission reaffirmed that Powerex continues to lack generation market power in its relevant destination markets, as well as to lack transmission market power and any ability to erect barriers to entry. Powerex has qualified as a Category 1 seller under the Commission's regulations.[6]

Under Section 1 of Powerex's FERC Rate Schedule No. 1, Powerex is authorized to make sales of ancillary services at market-based rates within certain organized markets and also bilaterally, subject to certain conditions imposed upon sellers by the Commission in Order No. 697.[7]

2. Description of NorthWestern

As noted in prior filings with the Commission, NorthWestern owns and operates transmission and distribution facilities in Montana under which it serves customers in the western two-thirds of the state. NorthWestern provides regulated transmission service under its OATT. On January 1, 2011, NorthWestern and its wholly owned subsidiary commenced commercial operation of the Mill Creek Generating Station, now known as the Davey Gates Generating Station ("DGGS"), a 150-MW natural gas-fired generating station near Anaconda, MT.[8] DGGS is used to provide regulation and

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[5] *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, Letter Order issued in Docket No. ER97-4024-012 (Sept. 12, 2000); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-002 (Oct. 30, 2003); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-007 (July 26, 2007).

[6] *See Powerex Corp.*, Letter Order issued in Docket No. ER01-48-018 (Oct. 29, 2010).

[7] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,252 at PP 1058-62, *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,268, *order on clarification*, Order No. 697-B, 124 FERC ¶ 61,055 (2008) (modifying its 1999 ruling in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,163).

[8] Previously, NorthWestern had been relying on contracts with third parties to provide ancillary services in order to maintain its system reliability in accordance with various Commission and North American Electric Reliability Council ("NERC") requirements, as well as to provide the ancillary services required under its OATT. To fulfill these obligations, Northwestern has obtain Regulating Reserve Services from various third parties, including Powerex.

frequency response service to NorthWestern's transmission customers, as required in Schedule 3 of the NorthWestern OATT.

B. Previous Powerex-NorthWestern Agreements for Regulating Reserve Services

1. The 2008 Reserves Agreement

In 2007, the Commission accepted an agreement between Powerex and NorthWestern under which Powerex would provide Regulating Reserve Service to NorthWestern from January 1, 2008 through December 31, 2008 ("2008 Reserves Agreement").[9] Under this agreement, Powerex was obligated to provide 50 MW of Regulating Reserve Capacity for twelve months at a price of $9.40/kW-month and to provide an additional 10 MW for the period May 1, 2008 to July 15, 2008 at a price of $14.00/kw-month, plus a fixed fee for firm transmission service between the British Columbia and NorthWestern systems.[10]

The 2008 Reserves Agreement was structured such that the parties could regulate both "up" and "down", i.e., by allowing NorthWestern to operate around a set-point of approximately half the total Regulating Reserve Capacity. In each hour, Powerex used eastbound firm transmission service to deliver Regulating Reserve Capacity and Energy to NorthWestern, while NorthWestern used westbound, non-firm transmission service to deliver Balancing Energy back to Powerex. The 2008 Reserves Agreement provided that Powerex and NorthWestern would net the Reserve Energy and Balancing Energy, and that any excess energy transferred from one party to the other after netting would be settled financially and priced at the Dow Jones Mid-Columbia ("Mid-C") Daily Firm On-Peak or Off-Peak Index price, as applicable ("Mid-C Index Price"). The parties contemplated that the agreement would generally be energy-neutral.

Thus, the 2008 Reserves Agreement involved three distinct components:

- A Regulating Reserves Capacity product;
- A set of offsetting sales of energy provided by Powerex and NorthWestern; and

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[9] *See* November 28, 2007 Order.

[10] The 2008 Reserves Agreement provided for an additional $5.60/kW-month to cover transmission charges incurred by Powerex for firm transmission service across the British Columbia Transmission Corporation (now the BC Hydro) and Bonneville Power Administrative ("BPA") transmission systems.

- Powerex reservations and scheduling over transmission between the British Columbia and NorthWestern systems, along with dynamic telemetry arrangements over such transmission systems.

In accepting the 2008 Reserves Agreement, the Commission granted a request by Powerex for waiver of its Section 1 of its FERC Rate Schedule No. 1 to permit the service to be provided.[11] The Commission found no evidence that Powerex had market power in the provision of ancillary services in the NorthWestern balancing authority area. In support of this finding, the Commission noted that "Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of the output of the 103 MW Hardin generating plant in Montana under a long-term agreement";[12] however, the Hardin resource is not capable of providing regulation service, and thus, the Commission determined that Powerex's "presence as a seller in the NorthWestern balancing authority area can only be viewed as pro-competitive."[13] Additionally, the Commission noted that Powerex owned no generation assets in the US and controlled through contract only a "very small market share (around 5 percent) of the uncommitted generation in the Northwestern control area."[14]

The Commission noted further that there was no evidence of binding transmission constraints for flows going from west to east in the NorthWestern system, and thus it was "reasonable to assume that for the provision of such a small load (50 MW) there are a variety of sellers between Powerex and NorthWestern that could have provided this service."[15] The Commission observed the approximately 2000 MW of available economic capacity in the NorthWestern balancing authority area during most periods of the year.[16]

Additionally, the Commission found that Powerex's provision of services to NorthWestern under the 2008 Reserves Agreement did not raise any of the market power concerns highlighted in the Commission's order in *Avista Corporation*[17] setting

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[11] November 28, 2007 Order at Ordering PP (A) and (B).

[12] *Id.* at P 26. Powerex notes that the output of the Hardin generating plant has subsequently been increased to 107 MW.

[13] *Id.*

[14] *Id.* at P 28.

[15] *Id.* at P 27.

[16] *Id.*

[17] *Avista Corp.*, 87 FERC ¶ 61,223 at 61,883, *order on reh'g*, 89 FERC ¶ 61,136 (1999) ("*Avista*").

forth the Commission's standards for provision of ancillary services at market-based rates.[18] In particular, there was no evidence that Powerex attempted to withhold these services from the market, Powerex was not the transmission provider in the NorthWestern balancing authority area, and there was no evidence that Powerex could erect barriers to entry.[19]

2. The 2009 Reserves Agreement

Powerex and NorthWestern subsequently negotiated and executed a nearly identical agreement for a two-year term from January 1, 2009 through January 6, 2011 ("2009 Reserves Agreement"), which the Commission accepted on November 14, 2008.[20] Under the 2009 Reserves Agreement, Powerex provided NorthWestern with 40 MW of Regulating Reserve Service, plus an additional 10 MW of service for the period April 30 through July 15 of each year. Pricing for the base contract quantity was fixed at an annualized lower price than the 2008 Reserves Agreement, at $8.90/kW-month, plus the cost of firm transmission across the British Columbia and BPA systems, provided that the total cost of the capacity and transmission could not exceed $15/kW-month. The contract also provided that the parties could mutually agree to increase the quantity of Regulating Reserve Services, with prices for this incremental amount varying from the base quantity price of $8.90/kW-month up to $12.90/kW-month.

Similar to the 2008 Reserves Agreement, the 2009 Reserves Agreement provided a unidirectional regulating reserve service and the intention of the parties that the energy transactions net to near zero. NorthWestern operated around a set-point equal to half the contract's Regulating Reserve Capacity and supplied Balancing Energy back to Powerex that, over time, was intended to net out with the Regulating Reserve Energy that Powerex delivered to NorthWestern.

In support of the 2009 Reserves Agreement, Powerex submitted a market power analysis that confirmed that the agreement did not result in an exercise of market power by Powerex.[21]

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[18] November 28, 2007 Order at P 28.

[19] *Id.*

[20] November 14, 2008 Order.

[21] *See Powerex Corp.*, Executed Agreement for Regulating Reserve Service, Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule, and Request for Expedited Treatment, Attachment A, Report of Carol C. Opatrny, filed in Docket No. ER08-1525-000 (Sept. 12, 2008) ("Opatrny Report").

The Commission accepted the 2009 Reserves Agreement in an order issued November 14, 2008.[22] In that order, the Commission found that the agreement was "unlikely to result in the exercise of market power in the Regulating Reserve Services market in the NorthWestern balancing authority area."[23]

C. NorthWestern's Present Need for Regulating Reserve Service

On February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to the 2008 and 2009 arrangements Powerex and NorthWestern had negotiated and the Commission had approved. NorthWestern informed Powerex that its need was immediate, that time was of the essence, and that NorthWestern required the Agreement to commence no later than February 3, 2012.

NorthWestern and Powerex subsequently confirmed that the appropriate telemetry and other operational requirements were in place to permit the provision of such service.

Attached as Appendix XX to this filing is the Statement of XXX of NWE. Mr. XXX states that [summarize].

As demonstrated by the statement of Mr. XXX, NorthWestern's need constitutes an extraordinary circumstance. To assure reliability requirements are met, immediate provision of service by Powerex is necessary.

D. The Current Regulating Reserves Agreement

The current BOM Agreement is nearly identical to the 2008 and 2009 Reserves Agreements accepted by the Commission, but at a lower price than either of the two prior longer-term agreements.

In particular, Powerex will provide NorthWestern up to 70 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge ("Capacity Charge") ranging from $8.00/kW-month to $12.00/kw-month depending on the MW provided.[24] Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and BPA transmission systems; however, the sum of the capacity charge and the transmission charge shall not exceed $15.00/kW-month unless mutually agreed by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system.

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[22] *See* November 14, 2008 Order.

[23] *Id.* at P 23.

[24] The Capacity Charge will be $8.00/kw-month for up to 30 MW, $10.00/kw-month for 30-60 MW and $12.00/kw-month for above 60 MW.

As it did in the 2008 and 2009 Agreements, NorthWestern will operate around a set-point that is half the Regulating Reserve Capacity to be provided under the Agreement. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission. The parties generally intend that the energy provided by each party will net out to near zero.

As discussed above, because of NorthWestern's need for service to begin immediately, Powerex will begin providing Regulating Reserve Service under this Agreement on February 3, 2012. Sections 3.1(4) and 3.1(6) of the BOM Agreement expressly provides that the market-based pricing set forth in the Agreement is valid only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex and NorthWestern have agreed:

- Powerex will charge NorthWestern no rate for the regulation service provided—and will provide NorthWestern with an invoice for service at a price reflecting $0/MW kW-month for the term of the BOM Agreement.
- Powerex and NorthWestern will not charge each other any rate for balancing energy provided; and each will merely provide the other with an invoice reflecting volumes of energy supplied at a price of $0/MWh.
- Powerex will charge NorthWestern the tariff rate for services as provided under the current OATTs of Bonneville Power Administration and BC Hydro.

The BOM Agreement presents no market power concerns. The structure and services provided are nearly identical to the terms the Commission reviewed and found acceptable in 2008 and 2009. The negotiated market price for the BOM services is set at a lower rate than the rate the Commission previously found acceptable and sufficiently competitive. The service is scheduled to be for a term of only 27 days. Thus, there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Powerex and NorthWestern have executed the BOM Agreement in contemplation that NorthWestern requires some level of service through the end of the year. Accordingly, as noted above, Powerex and NorthWestern are simultaneously negotiating another agreement under which Powerex may provide Regulating Reserve Service to NorthWestern from March 1, 2012 through January 31, 2013 under virtually identical terms, under market-based pricing. Powerex will seek a prior Commission authorization to make such sales as soon as that agreement is executed.

III.
REQUEST FOR WAIVER

In order for Powerex to sell Regulating Reserve Service to NorthWestern under the BOM Agreement, as described above, Powerex requests that the Commission grant a retroactive waiver of the provision in Section 1 of Powerex's market-based rate schedule, which limits its ability to make sales of ancillary services to public utilities that are obtaining such services to fulfill their own OATT obligations to provide such services to their customers. The Commission has previously granted similar waivers in *NorthWestern/Powerex* and in *Dynegy Power Marketing, Inc.*[25]

Good cause exists for the Commission to grant Powerex's requested waiver. The Commission has previously granted Powerex waivers to provide market-based sales of Regulating Reserve Service to NorthWestern,[26] and service is provided here under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. Further, the Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation and Frequency Response Service to its customers under Schedule 3 of its OATT. Provision of service under the Agreement is otherwise consistent with the Commission's stated objective of encouraging competitive ancillary service markets.

Moreover, similar to Powerex's and NorthWestern's prior agreements, the Agreement here does not present any market power concerns. Powerex continues to own no generation in the US and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant). As coal-fired generation, this resource is not capable of providing Regulating Reserve Service. Powerex has not attempted to withhold this service from the market, is not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry. The Agreement provides the additional safeguard of expressly contemplating the provision of service at no (i.e., $0/kW-month) rate in the event the Commission does not grant Powerex's requested waiver of the limitation in its market-based rate schedule.

In the event the Commission declines to grant the requested waiver, and to ensure that Powerex sales under the Agreement are not market-based rate sales for which no Commission authorization has been requested, Powerex requests that the Commission treat this filing as a filing of the Agreement on a stand-alone basis under FPA § 205(c)

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[25] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22; *Dynegy Power Marketing, Inc.*, 118 FERC ¶ 61,094, *order on reh'g and clarification*, 120 FERC ¶ 61,278 (2007); *Dynegy Power Marketing, Inc.*, 123 FERC ¶ 61,127 (2008).

[26] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22

and requests a waiver of the 60-day prior notice requirement for filing. As expressly provided in § 3.1(4) of the Agreement, if Powerex does not obtain the necessary waiver of its Rate Schedule No. 1 by the date on which Powerex is to invoice NorthWestern under the Agreement, (1) Powerex will provide the Regulating Reserve Service to NorthWestern at $0/kW-month; (2) Powerex and NorthWestern will supply balancing energy at $0/MWh; and (3) Powerex will invoice NorthWestern for the associated transmission between British Columbia and NorthWestern at the rates stated in the transmission providers' OATTs. In such case, there would be no rate for energy or capacity service and no detrimental impact to NorthWestern or its Schedule 3 transmission customers, and. On this basis, if the Commission declines to grant Powerex the waiver it has requested of its FERC Rate Schedule No. 1, tthe Commission should therefore accept the Agreement as just, reasonable, and not unduly discriminatory or preferential.

If the Commission considers the BOM Agreement under Section 205(c), waiver of the 60-day prior notice requirement is appropriate under FPA § 205(d) and Commission precedent, given the extraordinary circumstances and the need for NorthWestern to obtain this service to ensure reliability and to provide Schedule 3 service to its customers. Section 205(d) of the FPA expressly confers on the Commission the discretion to grant waiver of the 60-day prior notice requirement:

> The Commission, for good cause shown, may allow changes to take effect without requiring the sixty day's notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.[27]

The Commission has found such good cause to exist and has granted previous requests for waiver of the 60-day prior notice requirement in extraordinary circumstances, e.g., where agreements were "required to compensate sellers for critical generation services needed to assure reliability (at mitigated prices) . . . ."[28] As the Commission has recognized, these types of agreements "do not always lend themselves to being filed 60 days before service commenced."[29] Under *Central Hudson Gas and Electric Corp.*, the Commission is required to balance the need to deter violations of the FPA filing requirements with the requirement that rates not be

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[27] 16 U.S.C. § 824d(d).

[28] ISO New England Inc., 112 FERC ¶ 61,057 at P 14 (2005) (citing Mirant Americas Energy Marketing, L.P., et al., 105 FERC ¶ 61,039 (2003)).

[29] Mirant Americas Energy Marketing, L.P., et al., 105 FERC ¶ 61,039 at P 15.

confiscatory.[30] And as discussed above, extraordinary circumstances exist here and justify Powerex's submitting this Agreement after service commenced.

IV.
REQUEST FOR EXPEDITED TREATMENT

Powerex requests that the Commission consider this filing on an immediate and expedited emergency basis and to issue an order granting retroactive waiver as soon as feasibly possible. This will allow Powerex to mitigate the risk associated with making the transmission arrangements necessary to assure continued and uninterrupted delivery of Regulating Reserve Services to NorthWestern commencing February 3, 2012. This in turn will permit service NorthWestern to continue to provide reliable service on its transmission system.

V.
CONCLUSION

For the reasons set forth above, Powerex respectfully requests that the Commission grant its request for expedited treatment, and grant the waiver of Section 1 of its FERC Rate Schedule No. 1 requested herein, effective February 3, 2012.

Respectfully submitted,

/s/ Deanna E. King
Deanna E. King
Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
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Counsel for Powerex Corp.

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[30] Central Hudson Gas and Electric Corp., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

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Karen McDonald
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Michael Cashell
Andrew McLain
NorthWestern Energy

#3975160.01

Moran, Connie C

From: CASHELL, MICHAEL R
Sent: Thursday, February 02, 2012 2:44 PM
To: McGowan, Michael
Subject: FW: Draft Filing
Attachments: HOUSTON-#3975160-v1-Powerex_Petition_re_February_2012 _Balance_of_Month_Regulating_Reserve_Service_Contract_with_NorthWestern.DOC.doc

Importance: High

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From: MacDougall, Mike [mailto:Mike.MacDougall@powerex.com]
Sent: Thursday, February 02, 2012 2:44 PM
To: CASHELL, MICHAEL R; McLain, Andrew
Subject: Fw: Draft Filing
Importance: High

Hi Mike,
Here it is. I'm hoping its good to go.

Mike

From: Bradley, Tracey [mailto:Tracey.Bradley@bgllp.com]
Sent: Thursday, February 02, 2012 01:42 PM
To: MacDougall, Mike
Cc: King, Deanna <Deanna.King@bgllp.com>; Davis, Tracy <Tracy.Davis@bgllp.com>
Subject: Draft Filing

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February 2, 2012

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Powerex Corp.*, Docket No. ER12-___-000

Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule and Request for Expedited Treatment

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d (2006), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2011), Powerex Corp. ("Powerex") hereby respectfully requests a limited waiver of Section 1 of its market-based rate schedule ("FERC Rate Schedule No. 1") in order to provide NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern") with up to 70 MW of Regulating Reserve Service on an interim basis under an Agreement dated February 2, 2012. Powerex further requests that this waiver be made retroactive to February 3, 2012, the date Powerex is scheduled to commence service at NorthWestern's request.

This request for waiver is being made on an emergency basis, and Powerex seeks immediate and expedited Commission action because of NorthWestern's demonstrated pressing need to obtain Regulating Reserve Service in order to provide the service it is required to offer under Schedule 3 – Regulation and Frequency Response Service of its Open Access Transmission Tariff ("OATT"). Because Powerex has previously provided substantially the same service to NorthWestern in 2008 and 2009,[1] the parties

[1] *NorthWestern and Powerex Corp.*, 121 FERC ¶ 61,204 (2007) ("November 28, 2007 Order"); *Powerex Corp. and NorthWestern Corp.*, 125 FERC ¶ 61,179 (2008) ("November 14, 2008 Order").

negotiated and executed an interim balance-of-the-month ("BOM") agreement that would immediately supply NorthWestern with the needed service as soon as it was technically feasible. Service is scheduled to begin February 3, 2012 and under the terms of the Agreement, will last until February 29, 2012.

Section 1 of Powerex's FERC Rate Schedule No. 1 permits Powerex to provide ancillary services based on bilateral negotiations with counterparties, but provides that Powerex shall not make market-based rate sales of ancillary services to a public utility that is purchasing those services to satisfy its OATT requirements to offer ancillary services to its own customers.[2] As explained below, good cause exists for the Commission to grant a limited and retroactive waiver of this provision to authorize Powerex to make market-based sales to NorthWestern under this Agreement.

The BOM Agreement does not raise any market power concerns. This BOM Agreement is identical in structure to the agreement for which the Commission has twice waived Powerex's Section 1 restriction.[3] The proposed price for the services Powerex is to provide under this BOM Agreement is at a lower rate than that of the prior agreement. And further, the BOM Agreement specifically provides that its market-based pricing will take effect only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex will charge NorthWestern no rate ($0) for the capacity or energy services provided, and it will charge NorthWestern only for related transmission based on prices in place by the relevant transmission providers. Thus, there can be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Concurrent with this filing, Powerex and NorthWestern are presently negotiating a subsequent Regulating Reserve Service agreement that would be effective March 1, 2012 through April 30, 2012 (the "Term"), which Term may be extended upon mutually agreement on a month to month basis until January 31, 2013. Powerex will seek prior Commission authorization to make such sales. However, given the exigent circumstances and NorthWestern's urgent need for service, Powerex respectfully asks the Commission to approve the instant waiver request on the BOM Agreement retroactively, effective on the date service commenced, February 3, 2012.

Powerex respectfully requests an emergency and expedited order granting the requested and limited waiver, with Commission action as soon as feasibly possible.

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[2] *See* Powerex Corp., FERC Rate Schedule No. 1, at Section 1 (effective Sept. 30, 2010) (unpublished Letter Order issued Feb. 14, 2011 in Docket No. ER11-2664-000).

[3] *See* November 28, 2007 Order and November 14, 2008 Order.

I.
CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications in this proceeding should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

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III.
BACKGROUND

A. Description of Parties to the Agreement

1. Description of Powerex

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign Sovereign Immunities Act.[4] Powerex sells power at wholesale in the United States from a portfolio of resources, including capability from BC Hydro system resources, the Canadian Entitlement made available under the Columbia River Treaty, and power acquired from other sellers within the United States and Canada.

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[4] 28 U.S.C. §§ 1602, *et seq.*

Powerex makes wholesale sales in the United States pursuant to market-based rate authority originally granted by the Commission in 1997 and most recently reaffirmed by letter order dated July 26, 2007.[5] In its most recent order approving Powerex's continued authority to sell at market-based rates, the Commission reaffirmed that Powerex continues to lack generation market power in its relevant destination markets, as well as to lack transmission market power and any ability to erect barriers to entry. Powerex has qualified as a Category 1 seller under the Commission's regulations.[6]

Under Section 1 of Powerex's FERC Rate Schedule No. 1, Powerex is authorized to make sales of ancillary services at market-based rates within certain organized markets and also bilaterally, subject to certain conditions imposed upon sellers by the Commission in Order No. 697.[7]

2. Description of NorthWestern

As noted in prior filings with the Commission, NorthWestern owns and operates transmission and distribution facilities in Montana under which it serves customers in the western two-thirds of the state. NorthWestern provides regulated transmission service under its OATT. On January 1, 2011, NorthWestern and its wholly owned subsidiary commenced commercial operation of the Mill Creek Generating Station, now known as the Davey Gates Generating Station ("DGGS"), a 150-MW natural gas-fired generating station near Anaconda, MT.[8] DGGS is used to provide regulation and

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[5] *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, Letter Order issued in Docket No. ER97-4024-012 (Sept. 12, 2000); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-002 (Oct. 30, 2003); *Powerex Corp.*, Letter Order issued in Docket No. ER01-48-007 (July 26, 2007).

[6] *See Powerex Corp.*, Letter Order issued in Docket No. ER01-48-018 (Oct. 29, 2010).

[7] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,252 at PP 1058-62, *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. [Regs. Preambles] ¶ 31,268, *order on clarification*, Order No. 697-B, 124 FERC ¶ 61,055 (2008) (modifying its 1999 ruling in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,163).

[8] Previously, NorthWestern had been relying on contracts with third parties to provide ancillary services in order to maintain its system reliability in accordance with various Commission and North American Electric Reliability Council ("NERC") requirements, as well as to provide the ancillary services required under its OATT. To fulfill these obligations, Northwestern has obtain Regulating Reserve Services from various third parties, including Powerex.

frequency response service to NorthWestern's transmission customers, as required in Schedule 3 of the NorthWestern OATT.

B. Previous Powerex-NorthWestern Agreements for Regulating Reserve Services

1. The 2008 Reserves Agreement

In 2007, the Commission accepted an agreement between Powerex and NorthWestern under which Powerex would provide Regulating Reserve Service to NorthWestern from January 1, 2008 through December 31, 2008 ("2008 Reserves Agreement").[9] Under this agreement, Powerex was obligated to provide 50 MW of Regulating Reserve Capacity for twelve months at a price of $9.40/kW-month and to provide an additional 10 MW for the period May 1, 2008 to July 15, 2008 at a price of $14.00/kw-month, plus a fixed fee for firm transmission service between the British Columbia and NorthWestern systems.[10]

The 2008 Reserves Agreement was structured such that the parties could regulate both "up" and "down", i.e., by allowing NorthWestern to operate around a set-point of approximately half the total Regulating Reserve Capacity. In each hour, Powerex used eastbound firm transmission service to deliver Regulating Reserve Capacity and Energy to NorthWestern, while NorthWestern used westbound, non-firm transmission service to deliver Balancing Energy back to Powerex. The 2008 Reserves Agreement provided that Powerex and NorthWestern would net the Reserve Energy and Balancing Energy, and that any excess energy transferred from one party to the other after netting would be settled financially and priced at the Dow Jones Mid-Columbia ("Mid-C") Daily Firm On-Peak or Off-Peak Index price, as applicable ("Mid-C Index Price"). The parties contemplated that the agreement would generally be energy-neutral.

Thus, the 2008 Reserves Agreement involved three distinct components:

- A Regulating Reserves Capacity product;
- A set of offsetting sales of energy provided by Powerex and NorthWestern; and

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[9] *See* November 28, 2007 Order.

[10] The 2008 Reserves Agreement provided for an additional $5.60/kW-month to cover transmission charges incurred by Powerex for firm transmission service across the British Columbia Transmission Corporation (now the BC Hydro) and Bonneville Power Administrative ("BPA") transmission systems.

- Powerex reservations and scheduling over transmission between the British Columbia and NorthWestern systems, along with dynamic telemetry arrangements over such transmission systems.

In accepting the 2008 Reserves Agreement, the Commission granted a request by Powerex for waiver of its Section 1 of its FERC Rate Schedule No. 1 to permit the service to be provided.[11] The Commission found no evidence that Powerex had market power in the provision of ancillary services in the NorthWestern balancing authority area. In support of this finding, the Commission noted that "Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of the output of the 103 MW Hardin generating plant in Montana under a long-term agreement";[12] however, the Hardin resource is not capable of providing regulation service, and thus, the Commission determined that Powerex's "presence as a seller in the NorthWestern balancing authority area can only be viewed as pro-competitive."[13] Additionally, the Commission noted that Powerex owned no generation assets in the US and controlled through contract only a "very small market share (around 5 percent) of the uncommitted generation in the Northwestern control area."[14]

The Commission noted further that there was no evidence of binding transmission constraints for flows going from west to east in the NorthWestern system, and thus it was "reasonable to assume that for the provision of such a small load (50 MW) there are a variety of sellers between Powerex and NorthWestern that could have provided this service."[15] The Commission observed the approximately 2000 MW of available economic capacity in the NorthWestern balancing authority area during most periods of the year.[16]

Additionally, the Commission found that Powerex's provision of services to NorthWestern under the 2008 Reserves Agreement did not raise any of the market power concerns highlighted in the Commission's order in *Avista Corporation*[17] setting

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[11] November 28, 2007 Order at Ordering PP (A) and (B).

[12] *Id.* at P 26. Powerex notes that the output of the Hardin generating plant has subsequently been increased to 107 MW.

[13] *Id.*

[14] *Id.* at P 28.

[15] *Id.* at P 27.

[16] *Id.*

[17] *Avista Corp.*, 87 FERC ¶ 61,223 at 61,883, *order on reh'g*, 89 FERC ¶ 61,136 (1999) ("*Avista*").

forth the Commission's standards for provision of ancillary services at market-based rates.[18] In particular, there was no evidence that Powerex attempted to withhold these services from the market, Powerex was not the transmission provider in the NorthWestern balancing authority area, and there was no evidence that Powerex could erect barriers to entry.[19]

2. The 2009 Reserves Agreement

Powerex and NorthWestern subsequently negotiated and executed a nearly identical agreement for a two-year term from January 1, 2009 through January 6, 2011 ("2009 Reserves Agreement"), which the Commission accepted on November 14, 2008.[20] Under the 2009 Reserves Agreement, Powerex provided NorthWestern with 40 MW of Regulating Reserve Service, plus an additional 10 MW of service for the period April 30 through July 15 of each year. Pricing for the base contract quantity was fixed at an annualized lower price than the 2008 Reserves Agreement, at $8.90/kW-month, plus the cost of firm transmission across the British Columbia and BPA systems, provided that the total cost of the capacity and transmission could not exceed $15/kW-month. The contract also provided that the parties could mutually agree to increase the quantity of Regulating Reserve Services, with prices for this incremental amount varying from the base quantity price of $8.90/kW-month up to $12.90/kW-month.

Similar to the 2008 Reserves Agreement, the 2009 Reserves Agreement provided a unidirectional regulating reserve service and the intention of the parties that the energy transactions net to near zero. NorthWestern operated around a set-point equal to half the contract's Regulating Reserve Capacity and supplied Balancing Energy back to Powerex that, over time, was intended to net out with the Regulating Reserve Energy that Powerex delivered to NorthWestern.

In support of the 2009 Reserves Agreement, Powerex submitted a market power analysis that confirmed that the agreement did not result in an exercise of market power by Powerex.[21]

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[18] November 28, 2007 Order at P 28.

[19] *Id.*

[20] November 14, 2008 Order.

[21] *See Powerex Corp.*, Executed Agreement for Regulating Reserve Service, Request for Waiver of Provision of Powerex Corp. Market-Based Rate Schedule, and Request for Expedited Treatment, Attachment A, Report of Carol C. Opatrny, filed in Docket No. ER08-1525-000 (Sept. 12, 2008) ("Opatrny Report").

The Commission accepted the 2009 Reserves Agreement in an order issued November 14, 2008.[22] In that order, the Commission found that the agreement was "unlikely to result in the exercise of market power in the Regulating Reserve Services market in the NorthWestern balancing authority area."[23]

C. NorthWestern's Present Need for Regulating Reserve Service

On February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to the 2008 and 2009 arrangements Powerex and NorthWestern had negotiated and the Commission had approved. NorthWestern informed Powerex that its need was immediate, that time was of the essence, and that NorthWestern required the Agreement to commence no later than February 3, 2012.

NorthWestern and Powerex subsequently confirmed that the appropriate telemetry and other operational requirements were in place to permit the provision of such service.

Attached as Appendix XX to this filing is the Statement of XXX of NWE. Mr. XXX states that [summarize].

As demonstrated by the statement of Mr. XXX, NorthWestern's need constitutes an extraordinary circumstance. To assure reliability requirements are met, immediate provision of service by Powerex is necessary.

D. The Current Regulating Reserves Agreement

The current BOM Agreement is nearly identical to the 2008 and 2009 Reserves Agreements accepted by the Commission, but at a lower price than either of the two prior longer-term agreements.

In particular, Powerex will provide NorthWestern up to 70 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge ("Capacity Charge") ranging from $8.00/kW-month to $12.00/kw-month depending on the MW provided.[24] Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and BPA transmission systems; however, the sum of the capacity charge and the transmission charge shall not exceed $15.00/kW-month unless mutually agreed by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system.

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[22] *See* November 14, 2008 Order.

[23] *Id.* at P 23.

[24] The Capacity Charge will be $8.00/kw-month for up to 30 MW, $10.00/kw-month for 30-60 MW and $12.00/kw-month for above 60 MW.

As it did in the 2008 and 2009 Agreements, NorthWestern will operate around a set-point that is half the Regulating Reserve Capacity to be provided under the Agreement. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission. The parties generally intend that the energy provided by each party will net out to near zero.

As discussed above, because of NorthWestern's need for service to begin immediately, Powerex will begin providing Regulating Reserve Service under this Agreement on February 3, 2012. Sections 3.1(4) and 3.1(6) of the BOM Agreement expressly provides that the market-based pricing set forth in the Agreement is valid only if the Commission grants Powerex's requested waiver. If the Commission does not grant such waiver, Powerex and NorthWestern have agreed:

- Powerex will charge NorthWestern no rate for the regulation service provided—and will provide NorthWestern with an invoice for service at a price reflecting $0/MW kW-month for the term of the BOM Agreement.
- Powerex and NorthWestern will not charge each other any rate for balancing energy provided; and each will merely provide the other with an invoice reflecting volumes of energy supplied at a price of $0/MWh.
- Powerex will charge NorthWestern the tariff rate for services as provided under the current OATTs of Bonneville Power Administration and BC Hydro.

The BOM Agreement presents no market power concerns. The structure and services provided are nearly identical to the terms the Commission reviewed and found acceptable in 2008 and 2009. The negotiated market price for the BOM services is set at a lower rate than the rate the Commission previously found acceptable and sufficiently competitive. The service is scheduled to be for a term of only 27 days. Thus, there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service.

Powerex and NorthWestern have executed the BOM Agreement in contemplation that NorthWestern requires some level of service through the end of the year. Accordingly, as noted above, Powerex and NorthWestern are simultaneously negotiating another agreement under which Powerex may provide Regulating Reserve Service to NorthWestern from March 1, 2012 through January 31, 2013 under virtually identical terms, under market-based pricing. Powerex will seek a prior Commission authorization to make such sales as soon as that agreement is executed.

III.
REQUEST FOR WAIVER

In order for Powerex to sell Regulating Reserve Service to NorthWestern under the BOM Agreement, as described above, Powerex requests that the Commission grant a retroactive waiver of the provision in Section 1 of Powerex's market-based rate schedule, which limits its ability to make sales of ancillary services to public utilities that are obtaining such services to fulfill their own OATT obligations to provide such services to their customers. The Commission has previously granted similar waivers in *NorthWestern/Powerex* and in *Dynegy Power Marketing, Inc.*[25]

Good cause exists for the Commission to grant Powerex's requested waiver. The Commission has previously granted Powerex waivers to provide market-based sales of Regulating Reserve Service to NorthWestern,[26] and service is provided here under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. Further, the Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation and Frequency Response Service to its customers under Schedule 3 of its OATT. Provision of service under the Agreement is otherwise consistent with the Commission's stated objective of encouraging competitive ancillary service markets.

Moreover, similar to Powerex's and NorthWestern's prior agreements, the Agreement here does not present any market power concerns. Powerex continues to own no generation in the US and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant). As coal-fired generation, this resource is not capable of providing Regulating Reserve Service. Powerex has not attempted to withhold this service from the market, is not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry. The Agreement provides the additional safeguard of expressly contemplating the provision of service at no (i.e., $0/kW-month) rate in the event the Commission does not grant Powerex's requested waiver of the limitation in its market-based rate schedule.

In the event the Commission declines to grant the requested waiver, and to ensure that Powerex sales under the Agreement are not market-based rate sales for which no Commission authorization has been requested, Powerex requests that the Commission treat this filing as a filing of the Agreement on a stand-alone basis under FPA § 205(c)

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[25] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22; *Dynegy Power Marketing, Inc.*, 118 FERC ¶ 61,094, *order on reh'g and clarification*, 120 FERC ¶ 61,278 (2007); *Dynegy Power Marketing, Inc.*, 123 FERC ¶ 61,127 (2008).

[26] *See* November 28, 2007 Order at Ordering P (B); November 14, 2008 Order at P 22

and requests a waiver of the 60-day prior notice requirement for filing. As expressly provided in § 3.1(4) of the Agreement, if Powerex does not obtain the necessary waiver of its Rate Schedule No. 1 by the date on which Powerex is to invoice NorthWestern under the Agreement, (1) Powerex will provide the Regulating Reserve Service to NorthWestern at $0/kW-month; (2) Powerex and NorthWestern will supply balancing energy at $0/MWh; and (3) Powerex will invoice NorthWestern for the associated transmission between British Columbia and NorthWestern at the rates stated in the transmission providers' OATTs. In such case, there would be no rate for energy or capacity service and no detrimental impact to NorthWestern or its Schedule 3 transmission customers, and. On this basis, if the Commission declines to grant Powerex the waiver it has requested of its FERC Rate Schedule No. 1, tthe Commission should therefore accept the Agreement as just, reasonable, and not unduly discriminatory or preferential.

If the Commission considers the BOM Agreement under Section 205(c), waiver of the 60-day prior notice requirement is appropriate under FPA § 205(d) and Commission precedent, given the extraordinary circumstances and the need for NorthWestern to obtain this service to ensure reliability and to provide Schedule 3 service to its customers. Section 205(d) of the FPA expressly confers on the Commission the discretion to grant waiver of the 60-day prior notice requirement:

> The Commission, for good cause shown, may allow changes to take effect without requiring the sixty day's notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.[27]

The Commission has found such good cause to exist and has granted previous requests for waiver of the 60-day prior notice requirement in extraordinary circumstances, e.g., where agreements were "required to compensate sellers for critical generation services needed to assure reliability (at mitigated prices) . . . ."[28] As the Commission has recognized, these types of agreements "do not always lend themselves to being filed 60 days before service commenced."[29] Under *Central Hudson Gas and Electric Corp.*, the Commission is required to balance the need to deter violations of the FPA filing requirements with the requirement that rates not be

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[27] 16 U.S.C. § 824d(d).

[28] ISO New England Inc., 112 FERC ¶ 61,057 at P 14 (2005) (citing Mirant Americas Energy Marketing, L.P., et al., 105 FERC ¶ 61,039 (2003)).

[29] Mirant Americas Energy Marketing, L.P., et al., 105 FERC ¶ 61,039 at P 15.

confiscatory.[30] And as discussed above, extraordinary circumstances exist here and justify Powerex's submitting this Agreement after service commenced.

IV.
REQUEST FOR EXPEDITED TREATMENT

Powerex requests that the Commission consider this filing on an immediate and expedited emergency basis and to issue an order granting retroactive waiver as soon as feasibly possible. This will allow Powerex to mitigate the risk associated with making the transmission arrangements necessary to assure continued and uninterrupted delivery of Regulating Reserve Services to NorthWestern commencing February 3, 2012. This in turn will permit service NorthWestern to continue to provide reliable service on its transmission system.

V.
CONCLUSION

For the reasons set forth above, Powerex respectfully requests that the Commission grant its request for expedited treatment, and grant the waiver of Section 1 of its FERC Rate Schedule No. 1 requested herein, effective February 3, 2012.

Respectfully submitted,

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Deborah Leahy, Associate General Counsel, Energy Markets-2
Demetra Anas, Chief, Investigations Branch 1
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[30] Central Hudson Gas and Electric Corp., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

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