

ORDINANCE No. 121967

COUNCIL BILL No. 115419

AN ORDINANCE relating to the City Light Department; authorizing execution of Amendment No. 2 to the Service Agreement for Point-to-Point Transmission and the Transmission Assignment Agreement, which together will provide for the continuation of firm transmission for Skagit Treaty power from January 1, 2006 through December 31, 2035.

COMPTROLLER FILE No. _____

Introduced: OCT 17 2005	By: GODDEN DRYGO
Referred: OCT 17 2005	To: FULL COUNCIL
Referred:	To:
Referred:	To:
Reported: 10-24-05	Second Reading:
Third Reading: 10-24-05	Signed: 10-24-05
Presented to Mayor: 10-25-05	Approved:
Returned to City Clerk: 10/31/05	Published: Title 3 pp.
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Returned Unsigned
by Mayor

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommend that the same:

10-24-05 Passed 9-0

LAW DEPARTMENT

Committee Chair

ORDINANCE 121967

AN ORDINANCE relating to the City Light Department; authorizing execution of Amendment No. 2 to the Service Agreement for Point-to-Point Transmission and the Transmission Assignment Agreement, which together will provide for the continuation of firm transmission for Skagit Treaty power from January 1, 2006 through December 31, 2035.

WHEREAS, the 1984 treaty between the United States of America and Canada relating to the Skagit River, Ross Lake and the Seven Mile Reservoir on the Pend Oreille River (the "Skagit Treaty"), provided, among other things, for British Columbia to compensate the City of Seattle ("City") for not constructing a fourth stage extension of its Ross Dam on the Skagit River (the "High Ross Dam"); and

WHEREAS, the City and the Province of British Columbia entered into an agreement dated March 30, 1984, providing for British Columbia to supply the City with power equivalent to that which would have been produced by the construction of the High Ross Dam (the "Skagit Treaty Power") for the period January 1, 1986 through January 1, 2066; and

WHEREAS, on January 28, 1999, the City executed the Service Agreement for Point-to-Point Transmission ("Skagit PTP Agreement") with Bonneville Power Administration ("BPA") providing for the transmission of Skagit Treaty Power; and

WHEREAS, the Skagit PTP Agreement expires December 31, 2005; and

WHEREAS, on January 29, 1999, the City executed Amendatory Agreement No. 1 to the Skagit PTP Agreement to assign the City's interest in the Skagit PTP Agreement to the British Columbia Hydro and Power Authority; and

WHEREAS, on January 28, 1999, the City executed an Agreement for the Transmission of Skagit Treaty Power with British Columbia Hydro and Power Authority ("Assignment Agreement"), which agreement was re-assigned from British Columbia Hydro and Power Authority to Powerex Corp. under a re-assignment agreement ("Re-assignment Agreement"); and

WHEREAS, the Assignment and Re-assignment Agreements will expire December 31, 2005; and

WHEREAS, the City and BPA have negotiated Amendment No. 2 to the Skagit PTP Agreement ("Amendment No. 2") to extend the term of the Skagit PTP Agreement for 30 years beyond 2005; and



1 WHEREAS, the City and Powerex Corp. have negotiated a transmission assignment agreement
2 to replace the expiring Assignment Agreement (the "Transmission Assignment
Agreement"); NOW, THEREFORE,

3 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**


4 Section 1. The Superintendent of the City Light Department, or his designee, is hereby
5 authorized to enter into (1) Amendment No. 2 to its Service Agreement for Point-to-Point
6 Transmission ("Skagit PTP Agreement") with Bonneville Power Administration ("BPA") and (2)
7 the Transmission Assignment Agreement with Powerex Corp. ("Powerex"), substantially in the
8 form of the agreements attached to this ordinance as Exhibits A and B, respectively, with such
9 changes as may be required by BPA and which the Superintendent deems to be in the best
10 interests of the City and consistent with this ordinance. Amendment No. 2 will extend the term
11 of the Skagit PTP Agreement to secure the firm transmission path for Skagit Treaty Power
12 through December 31, 2035. The Transmission Assignment Agreement will replace an existing
13 agreement that expires December 31, 2005 and will provide for terms and conditions of the
14 assignment to Powerex of the City's rights and obligations under the extended Skagit PTP
15 Agreement. The Superintendent is further authorized, for and on behalf of the City, to agree
16 upon and to execute, record, administer and perform ancillary agreements or amendments to the
17 Skagit PTP Agreement and such other documents as may be reasonably necessary or appropriate
18 to carry out the assignment to Powerex (or termination of such assignment and re-assignment to
19 the City, as circumstances warrant and the contracts provide), provided that the Superintendent
20 notifies the Chair of the Energy and Environmental Policy Committee (or its successor
21 committee) before taking any such actions.
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Section 2. Any acts taken consistent with this ordinance, but prior to its effective date,
are hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of October, 2005, and signed by me in open
session in authentication of its passage this 24th day of October, 2005.



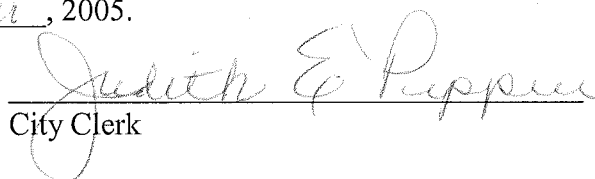
President _____ of the City Council

Approved by me this 31st day of _____, 2005.

**Returned Unsigned
by Mayor**

Gregory J. Nickels, Mayor

Filed by me this 31st day of October, 2005.



City Clerk

(Seal)

Exhibit A: Amendment No. 2

Exhibit B: Transmission Assignment Agreement





**Legislative Department
Office of City Clerk
Memorandum**

Date: November 1, 2005

To: Councilmembers

From: Judith E. Pippin, City Clerk

Subject: Mayor's Return of Council Bill No. 115419, Unsigned
*(Amendments to the Point-to-Point Transmission and Assignment Agreements for
Continuation of Transmission for Skagit Treaty Power)*

On October 31, 2005 Mayor Nickels returned Council Bill No. 115419, relating to the transmission agreement amendments for Skagit Treaty power, to this office without his signature of approval. He did not provide a letter of explanation.

The absence of the Mayor's signature indicates neither his approval nor disapproval of the Council Bill, as addressed in Seattle Municipal Code 1.04.020 and City Charter Article IV, Section 12.

However, a Bill returned by the Mayor unsigned is considered "approved" for purposes of the Bill becoming an Ordinance, and therefore law, within the City of Seattle.

The effective date of this Ordinance is November 30, 2005, 30 days from the date it was returned by the Mayor.

No further action on the part of Council is required.

AMENDMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
THE CITY OF SEATTLE

This AMENDMENT to the Point-to-Point Transmission Service Agreement, Contract Number 96MS-96084 (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and The City of Seattle (Transmission Customer). The BPA and the Transmission Customer are sometimes referred to individually as "Party", and collectively as "Parties" as the context suggests below.

This Amendment to the Agreement between the Transmission Provider and the Transmission Customer amends Article 3, Article 5.1, provides Revision No. 1 to Exhibit C, and provides Revision No. 4 to Exhibit H.

The Transmission Provider and the Transmission Customer agree:

1. EFFECTIVE DATE

This Amendment shall take effect on January 1, 2006 (Effective Date).

2. AMENDMENT OF AGREEMENT

The Transmission Provider and the Transmission Customer wish to amend the Agreement as follows:

- (a) Delete Article 3 and replace with the following:

"Service under this Service Agreement shall commence at 2400 hours on January 31, 1999. Service under this Service Agreement shall terminate on the earlier of (a) 2400 hours on December 31, 2035; or (b) 2400 hours on the date of termination established pursuant to the Tariff. All liabilities and obligations incurred under this Service Agreement shall be preserved until satisfied".



- (b) Delete Article 5.1 and replace with the following:

"NOTICES RELATING TO PROVISIONS OF THE SERVICE AGREEMENT"

Any notice, request, demand, or statement which is given to or made upon either Party by the other Party under any of the provisions of this Service Agreement, except those specified in Article 5.2 below, shall be in writing and shall be considered delivered when either personally delivered to the following or deposited in the mail postage prepaid and properly addressed to the following:

If to City of Seattle:

Seattle City Light
P.O. Box 34023
Seattle, WA 98124-0423
Attention: Power Management
Executive

If to BPA:

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666-1409
Attention: Transmission
Account Executive for Seattle
City Light"

3. The Parties agree that all other terms and conditions of the Agreement remain the same.

4. **SIGNATURES**

The signatories represent that they are authorized to enter into this Amendment on behalf of the Party for whom they sign.

THE CITY OF SEATTLE

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: ***Ordinance attachment –
Do Not Sign***

By:

Name: Jorge Carrasco
(Print/Type)

Name: Matt R. Rios
(Print/Type)

Title: Superintendent, City Light
Department

Title: Transmission Account
Executive

Date: _____

Date: _____

Attachment 1: Revision 1, Exhibit C, Statement of Specifications for Long-Term
Firm Transmission Service

Attachment 2: Revision No. 4, Exhibit H, Ancillary Services



REVISION 1, EXHIBIT C
STATEMENT OF SPECIFICATIONS FOR
LONG-TERM FIRM TRANSMISSION SERVICE

The purpose of this revision is: (1) to extend the term, (2) include Bothell Substation as part of the Contiguous POD, and (3) update footnote 4 (Contiguous Points of Delivery). This revision is effective 2400 hours on December 31, 2005.

1. TERM OF TRANSACTION

Start Date: at 2400 hours on January 31, 1999.

Termination Date: The earlier of: (a) 2400 hours on December 31, 2035; or (b) 2400 hours on the termination date established pursuant to Article 3 of this Service Agreement.

2. SUMMARY OF POINTS OF INTERCONNECTION AND POINTS OF DELIVERY/DELIVERING PARTY/CONTROL AREA/RECEIVING PARTY/SCHEDULING AGENT

Party (Resource) ¹	POI (Voltage)	POI Control Area	Maximum POI Demand (kW)	POD (Voltage)	POD Control Area	Maximum POD Demand (kW)	Receiving Party	Scheduling Agent ²
British Columbia Hydro and Power Authority (B.C. Hydro)/High Ross Treaty Power Purchase Contract	U.S. - Canadian Border (500 kV)	B.C. Hydro	230,000	Contiguous PODs ^{3 4}	Seattle	230,000	Seattle	Seattle
Total Transmission Demand			230,000			230,000		

Billing Transmission Demand = 230,000 kW

Scheduling Total Point of Interconnection Transmission Demand: 230 MW
Total Point of Delivery Transmission Demand: 230 MW

3. DESCRIPTION OF POINTS OF INTERCONNECTION

(a) U.S. - Canadian Border

Location: The point at the border between the United States and Canada in the vicinity of Blaine, Washington, where the 500-kV facilities of the Transmission Provider and B.C. Hydro are connected on the Custer-Ingledow No. 1 and No. 2 500-kV transmission lines.

¹ If the Delivering Party or Resource is not known at the time of application, the Transmission Customer or its Scheduling Agent shall identify the Delivering Party and Resource at the time of preschedule.

² A single designated scheduling agent will act in all capacities for the Transmission Customer pursuant to Exhibit I, Transmission Scheduling Provisions.

³ Contiguous POD includes Covington Substation, Maple Valley Substation, Snohomish Substation, Sno-King Substation, and Bothell Substation.

⁴ The Transmission Customer's designated contiguous points of delivery are subject to the terms and conditions outlined in the Transmission Provider's Business Practice (Contiguous Points of Delivery) or successor Business Practice.



Voltage: 500 kV

Metering: None (Scheduled Quantity)

4. POINTS OF DELIVERY

(a) Description of Points of Delivery

(1) Bothell Substation (Part of the Contiguous POD)

Location: The point in the Transmission Customer's Bothell Substation where the Snohomish-Bothell 230-kV #1 transmission line facilities of the Parties are connected.

Voltage: 230 kV

Metering: The Transmission Provider's Snohomish Substation, in the 230-kV circuits over which such electric power flows.

Exception: there shall be an adjustment for losses between the point of delivery and the metering point.

(2) Covington Substation (Part of the Contiguous POD)

Location: The points in the Transmission Provider's Covington Substation where the 230-kV facilities of the Parties are connected.

Voltage: 230 kV

Metering: In the Transmission Provider's Covington Substation in the 230-kV circuits over which such electric power flows.

Exception: There shall be an adjustment for losses by meter compensation between the point of delivery and the meter point.

(3) Maple Valley Substation (Part of the Contiguous POD)

Location: The points in the Transmission Provider's Maple Valley Substation where the 230-kV facilities of the Parties are connected.

Voltage: 230 kV

Metering: In the Transmission Provider's Maple Valley Substation in the 230-kV circuits over which such electric power flows.



(4) **Snohomish Substation (Part of the Contiguous POD)**

Location: The point in the vicinity of the Transmission Provider's Snohomish Substation where the 230-kV facilities of the Parties are connected.

Voltage: 230 kV

Metering: In the Transmission Provider's Snohomish Substation in the 230-kV circuit over which such electric power flows.

(5) **Sno-King Substation (Part of the Contiguous POD)**

Location: The point in the vicinity of the Transmission Provider's Sno-King Substation where the 230-kV facilities of the Parties are connected.

Voltage: 230 kV

Metering: In the Transmission Provider's Sno-King Substation in the 230-kV circuit over which such electric power flows.

5. **DESIGNATION OF PARTY SUBJECT TO RECIPROCAL SERVICE OBLIGATION**

Seattle.

6. **NAME(S) OF ANY INTERVENING SYSTEMS PROVIDING TRANSMISSION SERVICE**

None.

THE CITY OF SEATTLE

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: ***Ordinance Attachment – Do Not Sign***

By:

Name: Jorge Carrasco
(Print/Type)

Name: Matt R. Rios
(Print/Type)

Title: Superintendent

Title: Transmission Account Executive

Date: _____

Date: _____



**REVISION NO. 4, EXHIBIT H
ANCILLARY SERVICES**

This Revision No. 4 extends the term to 2400 hours on December 31, 2005. This revision is effective 2400 hours December 31, 2005.

This Exhibit H is subject to ACS-04 Rate Schedule or its successor rate schedule.

	Provided By	Contract No.
1. SCHEDULING, SYSTEM CONTROL AND DISPATCH	Transmission Provider	96MS-96084
2. REACTIVE SUPPLY AND VOLTAGE CONTROL	Transmission Provider	96MS-96084
3. REGULATION& FREQUENCY RESPONSE	As Applicable ¹	96MS-96084
4. ENERGY IMBALANCE SERVICE	As Applicable ¹	96MS-96084
5. OPERATING RESERVE – SPINNING RESERVE	As Applicable ¹	96MS-96084
6. OPERATING RESERVE – SUPPLEMENTAL RESERVE	As Applicable ¹	96MS-96084

THE CITY OF SEATTLE

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: **Ordinance Attachment – Do Not Sign**

By: _____

Name: Jorge Carrasco
(Print/Type)

Name: Matt R. Rios
(Print/Type)

Title: Superintendent

Title: Transmission Account Executive

Date: _____

Date: _____

¹ This service is not applicable at this time as the Transmission Customer has no load served in the Bonneville Power Administration (BPA) Control Area.



Transmission Assignment Agreement

The Parties to this Transmission Assignment Agreement ("Agreement"), executed as of the ____ day of _____, 2005, are Powerex Corp., a British Columbia corporation ("Powerex") and City of Seattle, a municipal corporation of the State of Washington of the United States of America, acting through its City Light Department ("Seattle") (each of Powerex and Seattle being sometimes referred to in this Agreement individually as "Party" and together as "Parties").

Recitals

WHEREAS, Seattle and the Government of British Columbia (the "Province") entered into an agreement dated March 30, 1984, providing for, among other things, the supply of power from the Province to Seattle under the Skagit Treaty for the period January 1, 1986, through January 1, 2066, unless earlier terminated by certain events (the "Skagit Agreement"); and

WHEREAS, the Province and British Columbia Hydro and Power Authority ("BC Hydro") entered into an agreement dated December 3, 1985, providing for the assignment and transfer of certain benefits and obligations of the Province under the Skagit Agreement to BC Hydro, a Crown corporation of the Province of British Columbia; and

WHEREAS, by agreement dated the ____ day of _____, 2005, BC Hydro assigned to Powerex and Powerex has assumed certain rights and obligations with respect to the Skagit Agreement, including the obligation to make delivery arrangements to Seattle; and

WHEREAS, Seattle has renewed the term of the current Skagit PTP Agreement to December 31, 2035, and wishes to assign the renewed Skagit PTP Agreement and its rights and obligations thereunder directly to Powerex effective on January 1, 2006; Powerex desires to take an assignment from Seattle of such rights and obligations;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions herein contained, the Parties agree as follows:

1. Interpretation.

1.1. In this Agreement, unless the context otherwise requires, the following capitalized terms shall have the following meanings:

- (a) "BPA" means the Bonneville Power Administration.
- (b) "BPA Tariff" means the BPA Open Access Transmission Tariff in effect at the relevant time.
- (c) "Commencement Time" has the meaning set forth in Section 2.
- (d) "Notice Letter" has the meaning set forth in Section 4.



- (e) "Parties" has the meaning set forth in the preamble to this Agreement.
 - (f) "Person" means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any governmental authority or any incorporated or unincorporated entity or association of any nature.
 - (g) "Re-Assignment Event" has the meaning set forth in Section 11.1.
 - (h) "Skagit PTP Agreement" means the service agreement and service specifications for Point-to-Point Transmission between BPA and Seattle, Bonneville Contract No. 96MS-96084, and any authorized amendment, replacement or renewal thereof.
 - (i) "Treaty Power" means power delivered or to be delivered to Seattle under the Skagit Agreement.
- 1.2. Capitalized terms used but not defined in this Agreement shall have the meaning set forth in the BPA Tariff or in the Skagit PTP Agreement, as the case may be.
2. Effective Date. This Agreement shall be effective as of 0000 hours on January 1, 2006 (the "Commencement Time").
3. Assignment and Assumption of Skagit PTP Agreement. Effective as at the Commencement Time:
- 3.1. Subject to the provisions in Section 6.5, Seattle hereby assigns to Powerex the Skagit PTP Agreement and all of Seattle's rights and obligations thereunder, subject to and in accordance with the terms and conditions of this Agreement; and
 - 3.2. Subject to the provisions in Section 6.5, Powerex hereby assumes all of Seattle's obligations arising from and after the Commencement Time with respect to the Skagit PTP Agreement, subject to and in accordance with the terms and conditions of this Agreement, including without limitation, payment obligations.
4. Notice of Assignment to BPA. Seattle and Powerex will execute and Seattle will deliver to BPA, a letter in the form attached as Exhibit A (the "Notice Letter") in respect of the assignment of the Skagit PTP Agreement. Seattle shall use reasonable efforts to provide, at least ____ days before the Commencement Time, evidence to the satisfaction of Powerex that the Notice Letter has been accepted by BPA. The rights and obligations of the Parties set forth in this Agreement (apart from this Section 4) and in the Notice Letter, shall be conditional upon the



Notice Letter being accepted by BPA at least ____ days prior to the Commencement Time.

5. Payment Obligations.

- 5.1. Subject to Sections 5.3, Powerex shall pay to BPA in a timely manner all amounts payable arising from and after the Commencement Time under the Skagit PTP Agreement. For so long as Seattle remains liable to BPA for amounts payable with respect to the Skagit PTP Agreement, Powerex shall, upon Seattle's written request, provide proof of payment to BPA of all charges payable by Powerex in respect thereof.
- 5.2. Subject to Section 5.3, Powerex shall indemnify and hold Seattle harmless from and against any claim by BPA that Seattle has failed to pay when due any amounts payable under the Skagit PTP Agreement after the Commencement Time. The Parties shall use commercially reasonable efforts to obtain BPA's agreement that BPA will only look to Powerex for payment of any amounts owing from time to time with respect to the Skagit PTP Agreement.
- 5.3. Seattle shall be responsible for paying, and shall reimburse Powerex to the extent that Powerex pays, all amounts payable under the Skagit PTP Agreement that are in the nature of use-of-facilities charges with respect to any of the Points of Delivery existing as at the Commencement Time.

6. Rights and Obligations.

- 6.1. For greater certainty, from and after the Commencement Time, Powerex shall be entitled to use the Skagit PTP Agreement and transmission capacity under it in any manner that is permitted under and pursuant to the Skagit PTP Agreement, the BPA Tariff and BPA's business practices including, without limitation, for secondary non-firm transmission eligible for sheltering and firm redirects, all as provided for in such business practices.
- 6.2. Powerex will not seek to alter the Points of Receipt or the Point(s) of Delivery on a permanent basis without first obtaining the consent of Seattle. For greater certainty and without limitation, Powerex may change the Point(s) of Receipt and Point(s) of Delivery on a secondary non-firm or firm redirect basis as provided for in the BPA Tariff and BPA's business practices.
- 6.3. Unless a Re-Assignment Event has occurred and has not been resolved, Seattle shall take no actions that could adversely affect the Skagit PTP Agreement or Powerex's rights under it.

- 6.4. Powerex shall take no actions that would impair the rights associated with the Skagit PTP Agreement if a Re-Assignment Event occurs.
- 6.5. The Parties agree that they are deferring the determination of which Party is entitled to exercise the BPA Tariff section 2.2 reservation priority associated with the Skagit PTP Agreement. The Parties shall negotiate in good faith to make such determination prior to the expiration of the primary term thereof.
7. Rights Not Affected. Execution of this Agreement by Powerex and Seattle shall not affect or modify, in any way, their respective rights and obligations (or the rights and obligations of BC Hydro) under the Skagit Agreement.
8. Ancillary Services, Losses; Other Transmission
- 8.1. Effective as and from the Commencement Time, Powerex shall self-provide or pay in a timely manner all amounts payable to BPA with respect to the ancillary services associated with, resulting from or arising out of Powerex's use of the Skagit PTP Agreement.
- 8.2. Powerex shall be responsible for replacing, at its sole cost and expense, and in accordance with each and all of the applicable BPA requirements (including the requirements of the Skagit PTP Agreement, the BPA Tariff and BPA's business practices) all losses associated with, resulting from or arising out of Powerex's use of the Skagit PTP Agreement.
9. Notices; Contacts. All notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 10. All notices, requests, statements or payments from one Party to the other Party shall be made in writing. Notices required to be in writing shall be delivered by hand delivery, overnight delivery or facsimile. Notice from one Party to the other Party by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a business day, in which case it shall be deemed received on the next business day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice from one Party to the other Party by telephone shall be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance herewith.



10. Contacts.

10.1. For Powerex

Contracts Manager
Powerex Corp.
1400-666 Burrard Street
Vancouver, B.C. V6C 2X8
Phone: 604.891.6003
Fax: 604.891.5015

10.2. For Seattle

Contracts Manager
Power Management Division
Seattle City Light
PO Box 34023
Seattle, WA 98124-4023
Phone: 206.386.4533
Fax: 206.386.4555

The Parties acknowledge and agree that those persons set forth in this Section 10 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

11. Re-Assignment Event; Re-Assignment.

11.1. A "Re-Assignment Event" means:

- (a) the material failure of BC Hydro to deliver or cause to be delivered the Treaty Power in circumstances where BC Hydro would be considered to be in breach of the Skagit Agreement;
- (b) the institution, with respect to Powerex, by Powerex or by another Person, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights, or the presentation or institution of a petition for the winding-up or liquidation of Powerex; provided such proceeding or petition, if instituted by another Person, remains undismissed for 30 days; or
- (c) the failure by Powerex to make any material payment with respect to the Skagit PTP Agreement when due, if and to the extent that BPA claims such amount against Seattle, provided that it shall not be a Re-Assignment Event if Powerex is in good faith disputing the claim for payment by BPA.



- 11.2. If a Re-Assignment Event occurs, or if BC Hydro discontinues its obligation to deliver capacity and energy under Sections 4 and 6 of the Skagit Agreement (other than due to the default of Seattle thereunder), Seattle shall have the right but not the obligation by notice to Powerex to require Powerex to re-assign the Skagit PTP Agreement to Seattle and the Parties shall take all necessary steps to effect such a re-assignment.
- 11.3. If Seattle discontinues its obligation to make payments under Section 5 of the Skagit Agreement (other than due to the default of BC Hydro or Powerex thereunder), or if BC Hydro terminates the Skagit Agreement due to the default of Seattle thereunder, then Powerex shall have the right but not the obligation to re-assign the Skagit PTP Agreement and all the rights and obligations thereunder to Seattle.
- 11.4. Seattle will indemnify and hold Powerex harmless for any costs associated with the Skagit PTP Agreement arising after the effective date of the reassignment of same to Seattle. Powerex will indemnify and hold Seattle harmless for any costs associated with the Skagit PTP Agreement arising prior to the effective date of reassignment of same to Seattle. In no event shall re-assignment of the Skagit PTP Agreement for any reason relieve either Party of any liability for any amounts due or payable to the other Party with respect to any period prior to such re-assignment.
12. Representations and Warranties Each Party warrants and represents to the other Party that (a) the execution, delivery and performance of this Agreement do not violate or conflict with its articles or certificate of incorporation, by-laws or comparable constitutive documents, any law applicable to it, any order or judgment of any governmental authority applicable to it or any agreement to which it is a party or by which it is bound, and (b) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally, and with regard to equitable remedies, to equitable defenses and the discretion of the court before which proceedings to obtain such remedies may be pending.
13. Miscellaneous
- 13.1. Assignment. Neither Party may assign the rights and obligations under this Agreement without the consent of the other Party, not to be unreasonably withheld. Notwithstanding the foregoing, Powerex may assign its rights and obligations under this Agreement to BC Hydro without the consent of Seattle.
- 13.2. Severability. Except as otherwise provided herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties will not otherwise affect the lawful obligations that arise under this Agreement.



- 13.3. Entire Agreement; Amendments. This Agreement together with the Notice Letter constitutes the entire agreement between the Parties. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.
- 13.4. Enurement. This Agreement shall enure to the benefit of and be binding on the Parties and their respective successors and permitted assigns.
- 13.5. Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Washington. The Parties further agree that the sole venue for any dispute over US\$75,000.00 regarding this Agreement shall be the United States District Court for the Western District of Washington. Each Party hereby consents to the jurisdiction of such court.
- 13.6. No Waiver. Except as otherwise provided herein or as agreed by the Parties, no provision of this Agreement shall be waived except in writing. Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other default or matter.
- 13.7. No Third-Party Beneficiaries. This Agreement is for the benefit of, and shall be enforceable by, the Parties only. This Agreement is not intended to confer any right or benefit on any third party (including BPA). No action may be commenced or prosecuted against a Party by any third party claiming as a third-party beneficiary of this Agreement or any of the transactions contemplated by this Agreement.
- 13.8. Relationship of the Parties. Seattle and Powerex agree that they shall not be partners or joint venturers by virtue of this Agreement. Neither Powerex nor Seattle is under any fiduciary obligation to the other Party hereunder. Each Party shall be individually and severally liable for its own obligations hereunder.
- 13.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed counterparts may be exchanged by fax as evidence of execution and delivery.
- 13.10. Time of Essence. Time is of the essence of this Agreement



13.11. Liability. Subject to applicable law which specifically limits a Party's ability to agree to this Section, no Party or its directors, officers, employees, or members of its governing bodies, shall be liable to the other Party for any loss of damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect or consequential damages or injury which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. The benefits of this Section 13.11 shall not extend to a party prevented by applicable law from agreeing with such provisions.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representative as of the date first written above.

POWEREX CORP.

THE CITY OF SEATTLE, WASHINGTON
CITY LIGHT DEPARTMENT

By: _____

By: ***Ordinance Attachment – Do Not Sign***

Name: _____

Name: _____ Jorge Carrasco _____

Title: _____

Title: _____ Superintendent _____



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
City Light	Cindy Wright/386-4533	Thomas Dunlap/386-9120

Legislation Title: AN ORDINANCE relating to the City Light Department; authorizing execution of Amendment No. 2 to the Service Agreement for Point-to-Point Transmission and the Transmission Assignment Agreement, which together will provide for the continuation of firm transmission for Skagit Treaty power from January 1, 2006 through December 31, 2035.

- **Summary of the Legislation:** The proposed legislation will provide for the Superintendent of the City Light Department to enter into Amendment No. 2 to the Service Agreement for Point-to-Point Transmission and the Transmission Assignment Agreement, which together will provide for the long-term transmission of Skagit Treaty power at no cost to the City of Seattle ("City").
- **Background:** On April 2, 1984 representatives of the United States and Canada signed the Treaty between the United States of America and Canada Relating to the Skagit River and Ross Lake, and the Seven Mile Reservoir on the Pend d'Oreille River (the "Skagit Treaty"). The Treaty resolved a number of issues between the City and the Canadians related to planned hydroelectric developments on the Skagit and Pend Oreille Rivers, but perhaps most importantly it provided for British Columbia to compensate the City for not constructing its High Ross Dam on the Skagit River. The Skagit Treaty, which extends through 2065, provides that the Bonneville Power Administration ("BPA") shall treat transmission of Skagit Treaty power as if it were generated in the United States.

Also in 1984, the City and the Province of British Columbia entered into an agreement dated March 30, 1984 (the "1984 Skagit Agreement") providing for British Columbia to supply the City with power equivalent to that which would have been produced by the construction of the High Ross Dam (the "Skagit Treaty Power") for the period January 1, 1986 through January 1, 2066.

The 1984 Skagit Agreement provided that British Columbia pay the cost of transmission of the Skagit Treaty Power and further provided that the Province and the City work in concert to achieve mutually beneficial transmission arrangements which allow for the Province of British Columbia to use surplus transmission capacity when it is not needed for transmission of Skagit Treaty Power to the City.

The Province delegated its responsibilities for power supply to its crown corporation, British Columbia Hydro and Power Authority ("B.C. Hydro").



BPA first provided transmission for the Skagit Treaty Power under an Integrated Resources Transmission Service Agreement with the City under a contract dated November 10, 1987. Effective October 1, 1996, the transmission service for the Skagit Treaty Power was converted to a point-to-point transmission service agreement under BPA's (then newly developed) open access transmission tariff, which service agreements were annually renewed until 1999, when the City (pursuant to Ordinance 119347) signed on January 28, 1999 the long-term Service Agreement for Point-to-Point Transmission with BPA that expires on December 31, 2005 ("Skagit PTP Agreement").

Simultaneously, the City and B.C. Hydro executed an agreement (authorized pursuant to Ordinance 119349), Agreement for the Transmission of Skagit Treaty Power Between British Columbia Hydro and Power Authority and the City of Seattle, that assigned the City's rights and obligations under the Skagit PTP Agreement to B.C. Hydro through December 31, 2005. B.C. Hydro subsequently delegated its power scheduling responsibilities to Powerex Corp. ("Powerex") through a separate re-assignment agreement.

As all of these agreements expire at the end of this year, the parties have decided to replace them on a long-term basis under similar terms, except that the assignment of the City's rights and obligations will be made directly to Powerex. Under the proposed amendment and agreement, the City will continue to contract with BPA for long-term transmission rights for its Skagit Treaty Power, but assign the financial and operational responsibilities to Powerex on a long-term basis. The new assignment agreement will also provide for termination following the occurrence of certain events, which will ensure that the City can recover valuable transmission rights in the event that British Columbia defaults on its Skagit Treaty obligations.

- *Please check one of the following:*

☒ **This legislation does not have any financial implications.**

Notes: Since the financial obligation under the existing agreement has been assigned to B.C. Hydro/Powerex and will be assigned to Powerex under the proposed agreement, City Light does not budget and will not budget for this transmission expense. Signing these agreements will not affect City Light's budgets or financial outlook.

- **What is the financial cost of not implementing the legislation?** If B.C. Hydro and Powerex continue to fully perform their respective obligations under the 1984 Skagit Agreement until 2066 (as currently expected), failing to execute the proposed agreements would have no financial consequence to the City. If, on the other hand, British Columbia defaulted on its Skagit Treaty Power deliveries to the City, then in addition to losing an extremely valuable power resource, the City would also have no rights to the transmission path.



- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** The only alternative is to do nothing, thereby relinquishing (permanently) the control of transmission rights on the B.C. – Seattle transmission path. City Light does not recommend this alternative. After 2020, the major part of the City's power payment obligations will be satisfied and then the Skagit Treaty Power will likely be the City's lowest cost purchased power resource for many years thereafter. The deliberate retention of the B.C – Seattle transmission rights is part of City Light's strategy to ensure the long-term performance of British Columbia on its Skagit Treaty obligations, specifically delivery of High Ross replacement power between 2020 and 2066.
- **Is the legislation subject to public hearing requirements:** No.
- **Other Issues:** None.



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

October 4, 2005

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

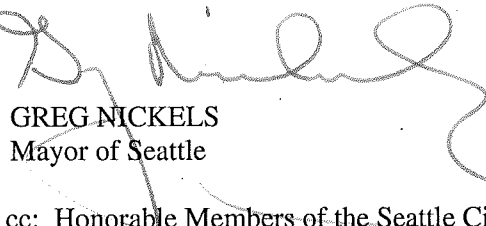
Dear Council President Drago:

The attached proposed Council Bill authorizes the Superintendent of the City Light Department to extend two agreements related to the transmission of High Ross replacement power. In 1984, the United States and Canada signed a treaty relating to the Skagit River, Ross Lake, and the Seven Mile Reservoir on the Pend Oreille River. Around the same time, the City of Seattle executed an agreement with British Columbia that required the Province to replace the power that otherwise could have been generated had Seattle followed through with its plan to construct a fourth extension to its Ross Dam on the Skagit River (i.e., the "High Ross Dam").

British Columbia's power is currently transferred to the City under a Service Agreement for Point-to-Point Transmission ("Skagit PTP Agreement"), that will expire on December 31, 2005. A related Assignment Agreement that transferred the City's rights and obligations under the Skagit PTP Agreement to Powerex Corp., (via British Columbia Hydro and Power Authority) will also expire at the end of the year. Together, Amendment No. 2 to the Service Agreement for Point-to-Point Transmission with the Bonneville Power Administration, and the Transmission Assignment Agreement with Powerex Corp., will secure the firm transmission rights for City Light to continue receiving High Ross Dam replacement power from Canada through the year 2035.

Thank you for your consideration of this legislation. Should you have questions, please contact Cindy Wright at 386-4533.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



STATE OF WASHINGTON – KING COUNTY

--SS.

191472
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

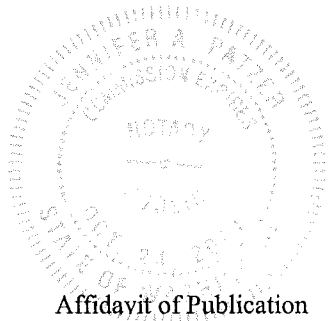
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121967-121971

was published on

11/02/05

The amount of the fee charged for the foregoing publication is the sum of \$ 59.63, which amount has been paid in full.



Affidavit of Publication

M. J. Patzer

Subscribed and sworn to before me on

11/02/05

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on October 24, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121971

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121969

AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the grant of an easement to Puget Sound Energy for a nonexclusive easement over, under, along, and across a portion of the property known as the Joint Training Facility with an address of 9401 Myers Way S.

ORDINANCE NO. 121967

AN ORDINANCE relating to the City Light Department; authorizing execution of Amendment No. 2 to the Service Agreement for Point-to-Point Transmission and the Transmission Assignment Agreement, which together will provide for the continuation of firm transmission for Skagit Treaty power from January 1, 2006 through December 31, 2035.

ORDINANCE NO. 121968

AN ORDINANCE relating to the 3rd Avenue NE extension project in the Northgate Urban Center, lifting a budget proviso that had restricted spending on the 3rd Avenue NE extension project and authorizing an agreement with King County.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, November 2, 2005.

11/2(191472)