



Reply to the Attention of Karl E. Gustafson, Q.C.
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Our File No. 221686
Date January 20, 2017

VIA EMAIL

B.C. Utilities Commission
6th Floor - 900 Howe Street
Vancouver, B.C. V6Z 2N3

Attention: Commission Secretary

Dear Sirs/Mesdames:

IN THE MATTER OF the *Utilities Commission Act*, RSBC 1996, Chapter 473 (the “UCA”) and Class Exemption for BC Hydro Customers that Resell Electricity Under Certain Lease Arrangements

This submission is made on behalf of Templeton DOC Limited Partnership (“**Templeton LP**”). Templeton LP is a limited partnership formed under the laws of British Columbia between Vancouver Airport Authority and MGE Designer Outlet Vancouver ULC, an affiliate of McArthurGlen Group, to own and operate the Regional Outlet Centre located at Vancouver International Airport to be known as McArthurGlen Designer Outlet Vancouver Airport (the “**Outlet Centre**”).

Background

By Commission Order G-131-15, dated August 4, 2015 (the “**Templeton Exemption**”), the Commission ordered that Templeton LP be exempt from Part 3 of the UCA except for sections 25, 38, 41 and 42, for the purpose of resale of electricity to its lessees, with a term of exceeding five years, at the Regional Designer Outlet Centre located at Vancouver International Airport in Richmond, British Columbia. The Templeton Exemption also exempted Templeton LP and its tenant lessees, provided that the lessees are not reselling electricity, from section 71 of the UCA. The Templeton Exemption was conditional on Templeton LP’s compliance with the BC Hydro Electric Tariff Terms and Conditions for the Resale of Electricity. Order G-131-15 provides that the Templeton Exemption remains in effect until the Commission, after conducting a hearing, orders the exemption no longer applies.

Submission

In its hearing Order G-191-16, the Commission invited Intervenors to address three following three questions:

- 1) Should this proposed class exemption be granted?
- 2) If so, are the terms and conditions proposed in the draft exemption order satisfactory?
- 3) Should any further regulatory process be held to consider this matter and why? And if so, what process should be held?

In response, on behalf of Templeton LP, we submit as follows:

1) Should this proposed class exemption be granted?

Templeton LP supports the grant of a class exemption as proposed. It is not uncommon for landlords and their tenants to wish to enter into mutually beneficial commercial relationships that include the supply of energy to leased premises. Such arrangements are permissible without the landlord becoming a “public utility” under the UCA provided the term of the lease is for a term of 5 years or less. The threshold of a lease term of more than 5 years is clearly arbitrary.

Templeton submits that there is no particular justification for regulating a landlord as a public utility merely because it re-sells electricity to a tenant having a lease for more than 5 years. Any concern that a tenant might be unduly prejudiced by the absence of ongoing regulatory oversight by the Commission is adequately covered by the proposed terms of the class exemption that, pursuant to section 83 of the UCA, the Commission will retain the right and ability to intervene if warranted in any particular circumstance.

In general terms, Templeton LP submits that landlords and tenants should be at liberty to negotiate and enter into commercial arrangements free from regulatory interference. We submit that in the circumstances of commercial leases, the parties are well able to look after their own business interests and that little incremental value would be derived from ongoing regulatory oversight by the Commission with its attendant costs for the parties. In Templeton’s experience, its tenants, including those at the Outlet Centre, are sophisticated consumers who are represented by legal counsel and other professional advisors in their negotiations of lease terms.

In our submission, as a general rule, the Commission should forebear from regulating except as needed. The fundamental purpose for which the UCA (and similar utility regulatory statutes in other jurisdictions) was enacted was to safeguard the public from potential abuse by natural monopolies in circumstances where efficiencies of economies of scale provide direct benefits to consumers and where competition is not feasible to achieve those efficiencies. Landlords would rarely be considered as natural monopolies. Templeton LP and its tenants operate in a competitive market where the terms of the lease agreements, including the basis upon which utility charges are paid, will be freely negotiated by sophisticated parties.

2) If so, are the terms and conditions proposed in the draft exemption order satisfactory?

The terms and conditions of the proposed draft exemption order are generally satisfactory. Templeton LP notes that the proposed terms and conditions are consistent with those imposed in relation to the exemption it obtained pursuant to Commission Order G-130-07. We ask that it be made clear that if circumstances arise such that the class exemption order is to be restricted or cancelled, the exemption granted previously to Templeton LP should not be affected. Templeton LP was put to significant trouble and expense to obtain a standalone

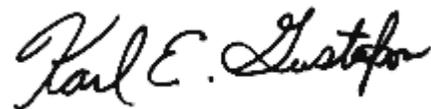
exemption on its own merits. That exemption should continue upon the terms and conditions on which it was granted.

3) Should any further regulatory process be held to consider this matter and why? And if so, what process should be held?

The reasons for granting a class exemption in relation to the re-sale of electricity purchased from BC Hydro also apply with respect to the re-sale of (i) electricity purchased from suppliers other than BC Hydro and (ii) other forms of energy including natural gas. We suggest that a further regulatory process be undertaken to consider whether a similar class exemption should be granted on a broader basis.

All of which is respectfully submitted on behalf of Templeton LP.

Yours truly,

A handwritten signature in black ink that reads "Karl E. Gustafson". The signature is written in a cursive, flowing style.

Karl E. Gustafson, Q.C.*

KEG/

*Law Corporation