



# David M. Aaron

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February 7, 2014

**By Electronic Mail**

BC Utilities Commission  
Sixth Floor, 900 Howe Street, Box 250  
Vancouver, BC  
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**Attention: Erica Hamilton, Commission Secretary**

Dear Sirs / Mesdames:

**RE: British Columbia Hydro and Power Authority (“BC Hydro”)  
Application for Approval of Charges re: Meter Choices Program**

The following is submitted on behalf of Citizens for Safe Technology Society (“CSTS”) and Nomi Davis in response to the submission by the British Columbia Hydro and Power Authority (“BC Hydro”) dated January 24, 2014 (“the BC Hydro Submission”).

**A. Inflated cost for retention of legacy meters**

The BC Hydro submission, at section 3.2.1, acknowledges that lowering the legacy meter charge will increase the demand for legacy meters. As stated at paragraph 45 of the BC Hydro Submission:

A lower monthly charge for customers with legacy meters installed at their premises, other things being equal, will be expected to result in higher demand for legacy meters for a longer period of time.

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The BC Hydro submission goes on to assert, on the basis of confidential information, that costs to all customers would increase in the event that “large numbers of legacy meters” were to remain on the system.<sup>1</sup> At paragraphs 45 - 46 of the BC Hydro Submission, it is argued:

A large number of legacy meters remaining on the system in response to such demand might have significant impacts to Smart Metering Program benefits to the detriment of all customers. ... For the reasons above, BC Hydro urges the BCUC to exercise caution if it considers using its discretion to reduce the legacy meter charge.

Essentially, BC Hydro is arguing that a high legacy meter fee should be maintained as a disincentive to customers choosing to retain their legacy meters. Why? So as to avoid “increasing costs for all customers”.

The rationale provided by BC Hydro for its legacy meter fee is outside of the scope of Direction No. 4. A fee based on a deterrent factor, so as to keep fees down for “all customers” is not “related” to any of the permissible categories of recovery enumerated in Direction No. 4 (“program costs”, “investigation costs” or “infrastructure costs”). In fact, BC Hydro is transparent about the fact that the legacy meter fee is rationalized by concerns that are extraneous to “program costs”, “investigation costs” and “infrastructure costs”; concerns that have nothing to do with the incremental cost of retaining a legacy meter; concerns that derive from the prospect of losing the opportunity to deter theft for the benefit of “all customers”.

Where there is a benefit to all customers, the costs associated with that benefit should be borne by all customers, like a postage stamp, and not subsidized through the imposition of a disincentive on legacy meter customers. The rationale advanced by BC Hydro reflects a punitive approach designed to scare customers away from the “choice” of legacy meters. BC Hydro has its “enrollment data” to show for it.

The CSTS requests that the Commission decline to approve a legacy meter fee on the basis that it is extraneous to “program costs”, “investigation costs” and “infrastructure costs”. Any true costs associated with the retention of legacy meters should be recovered from “all customers” as per section 3(1)(a)(ii) of Direction No. 4 which explicitly allows for such a recovery.

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<sup>1</sup> BC Hydro Submission at para 43

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## **B. Exclusion Costs**

While BC Hydro argues that “the new charges have been calculated on a cost-of-service basis,” it ignores the fact that the cost of service has been significantly affected by a policy that has arbitrarily limited the pool of customers who may opt out and has driven up per-premises opt-out costs.

This is an additional component of the proposed radio-off and legacy meter cost that is extraneous to the permissible categories of cost recovery under Direction No. 4. These are the costs resulting from the exclusion of various customers from being eligible to participate in the meter choices program. We refer to these as “the Exclusion Costs”.

Provincial policy, by way of Direction No. 4, has significantly narrowed the pool of BC Hydro customers eligible to opt out. This eligible pool excludes customers seeking to arrange new service or customers who have suffered the installation of a smart meter against their express wishes.

Simply put, if every customer who wishes to opt out is were given the choice to do so, there would be increased enrollment in the meter choices program and per-premises costs would decrease. Furthermore, if the prospective opt-out fees were promulgated as being on par with those approved by the Commission for FortisBC, enrollment would increase and per-premises costs would decrease.

The proposed radio-off and legacy meter costs are not purely costs of opting out - they are costs that have been inflated by an extraneous factor: a narrowing of eligible participants. To the extent that opt-out costs have been inflated as such, they are not recoverable under section 3(1)(a)(i) of Direction No. 4.

The narrowing of eligible participants is, in our submission, arbitrary. Consider two customers, both of whom provided explicit communication to BC Hydro, by way of correspondence and conspicuous signage, of their refusal to allow a smart meter installation. The first customer was home when BC Hydro’s contractor attended to install the smart meter, and the installation did not occur, so that customer is now eligible under the meter choices program. The second customer happened to be out when BC Hydro’s contractor attended to install the smart meter,

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and the installation proceeded notwithstanding the conspicuous signage. That customer is now ineligible under the meter choices program.

Since eligibility is arbitrary, it does not make sense to burden opt-out customers with the increased cost arising out of the exclusion of willing customers from the meter choices program. Those are costs determined by the invasive practices of BC Hydro and the arbitrary exclusion policy of Direction No. 4. To the extent that they are not pure program costs, but rather costs associated with provincial policy, they should be borne by “all customers” under section 3(1)(a)(ii) of Direction No. 4. Eligible customers should not have to pay the costs of the provinces policy of narrowing eligibility so as to exclude willing participants and drive up per-premises costs.

These Exclusion Costs have been overlooked by BC Hydro. For example, at paragraph 16 of the BC Hydro Submissions, it is stated:

All costs identified are fully incremental and arise solely as a result of offering the meter choices to eligible customers.

[emphasis added]

The above-referenced statement by BC Hydro ignores the Exclusion Costs, those being costs that do not arise “solely as a result of offering the meter choices to eligible customers”. Rather, the Exclusion Costs are a component of costs that arise from the narrowing of eligible participants in the meter choices program.

In implementing Direction No. 4, the decision for the Commissions is: to what extent should meter choice program costs be borne by opt-out customers under section 3(1)(a)(ii) versus “all customers” under section 3(1)(a)(ii)? In this regard, BC Hydro’s position is clear, as set out at paragraph 17 of the BC Hydro Submission:

17. The approach is also consistent with the BCUC decisions regarding rates for FortisBC customers that choose the radio-off meter option of FortisBC's Advanced Metering Infrastructure ("AMI") Project. Specifically, in the BCUC's Order No. G-220-13 Reasons for Decision dated December 13, 2013 (the "FBC AMI Radio-off Option Decision") 13 the BCUC confirmed its principle that the "incremental cost of opting-out of the AMI program will be borne by the individual choosing to opt-out". [emphasis added]

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In response to paragraph 17 of BC Hydro submission, we submit that the FortisBC decision is distinguished because in that case, the pool of eligible opt-out customers included every FortisBC customer. As such, in the context of FortisBC, there was no policy that operated to reduce the scope of eligible customers and drive up per-customer costs.

In the present case, the cost that BC Hydro is seeking to recover is not simply the incremental costs, as it was with FortisBC. Here, BC Hydro is seeking to recover costs as affected by a policy that has arbitrarily limited the pool of customers who may opt out and has driven up per-premises opt-out costs.

Given that the Exclusion Costs are a result of policy decisions taken in the interest of the entire utility, those costs should be borne by “all customers” under section 3(1)(a)(ii) of Direction No. 4. This would be consistent with the “postage stamp” model to cost recovery.

The foundation for the BC Hydro rate system is equity across the whole network. The imposition of Exclusion Costs on a particular segment of customers would amount to a rate system that makes some citizens less equal than others. Regrettably, it would seem that this is exactly the effect that BC Hydro would like to achieve through the imposition of an opt-out fee that is more about punishment and deterrent than it is about cost recovery.

### **C. Charging customers who live in Undeveloped Areas**

In its answers to CSTS 1.21 - 1.25, and 2.13, BC Hydro admits that:

1. BCH has installed smart meters in areas that do not yet have the infrastructure to run the smart grid (“the Undeveloped Areas”).
2. The Undeveloped Areas are areas where it is impracticable because of distance, electromagnetic interference, physical obstruction or other similar causes for BC Hydro to establish a telecommunications link between the smart meter at the customer's premises and BC Hydro's systems.

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3. In the Undeveloped Areas, BC Hydro continues to keep these meters on the schedule of meters requiring manual reading.
  4. Some radio-off and legacy customers will be situated in areas where smart meters are not yet operational with respect to the data collection and transmission grid.
  5. BC Hydro does not have a timetable for the expansion of Field Area Network and Wide Area Network (WAN) coverage to include any or all of these meters within the Undeveloped Areas. In other words, the Undeveloped Areas will remain undeveloped indefinitely.

Where a customer resides in an Undeveloped Area, BC Hydro will incur a cost for manually reading that customer's meter regardless of whether that meter is a smart meter, a radio-off meter or a legacy meter. As such, the cost of reading pre-exists the smart meter program and does not properly correspond to "program costs", "investigation costs" or "infrastructure costs" as defined in Direction No. 4.

As such, the CSTS requests that the Commission order BC Hydro to discount the monthly fee for radio-off and legacy meters so as to exclude a component equivalent to calculated costs for manual meter reading in the Undeveloped Areas.

#### **D. Exit fee not justified**

The CSTS opposes the inclusion, in the initial radio-off meter charge, of a \$55 exit fee.

The inclusion of the exit fee is based on the assumption that this is a "cost that BC Hydro will eventually incur to attend at the customer's premises to install a smart meter."<sup>2</sup>

In our submission, BC Hydro falsely assumes that each radio-off meter will eventually be replaced by a smart meter. At the very least, there will be circumstances where customers retain their radio-off meters without any prospect of reverting to a smart meter in the foreseeable future. Why should these customers

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<sup>2</sup> BC Hydro Submission at paragraph 54.

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pay a \$55 exit fee for an installation where the prospects of that installation are, at best, remote and distant?

The BC Hydro submission, at paragraph 58, states:

58. It is uncertain as to whether or not the alternative approach described above would encourage participation in the radio-off option as this would depend on the customer preference for an initial charge relative to an exit charge.

We see no basis upon which a customer, choosing a radio-off meter, would prefer an initial charge of \$55 relative to an exit charge.

The cost to which the \$55 exit fee corresponds is not a certain cost, but rather a hypothetical one based on conjecture. It is a notional cost that is too remote to bring it within the scope of the language of Direction No. 4. In particular, that cost is too remote to be “related” within the meaning of the terms “program costs”, “investigation costs” or “infrastructure costs” as defined in Direction No. 4.

We submit that the \$55 exit fee should be refused by the Commission. Alternatively, there is no reason why such a cost should not be billed to the customer at the time that it is incurred. In either case, there is no basis for inclusion of the \$55 exit fee in the initial radio-off meter charge.

The CSTS requests that the Commission order BC Hydro to discount the monthly fee for radio-off and legacy customers so as to exclude the \$55 exit fee component.

#### **E. Further weaknesses in BC Hydro’s cost estimate**

BC Hydro’s claimed costs for providing radio-off or legacy meter service are not supported by independent evidence. Further, the determination of the direct incremental cost of the program is clouded by the existence of many shared cost items. We are also concerned with the broad variability with which meters are being read in the field. The inconsistency with which customers are receiving manual meter reads undermines the basis upon which recovery costs are proposed.

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## **F. Warped “enrollment data”**

We submit that BC Hydro has engaged in an arbitrary exercise by soliciting “enrollment data” from eligible customers on the basis of fees that are subject to reduction by the Commission.

In fact, we assert that BC Hydro’s use of the term “enrollment data” is a misnomer because there can be no accurate predictor of enrollment rates where 1) fee levels are a disincentive to enrollment; and 2) suggested fees are hypothetical and subject to revision.

In our submission, BC Hydro’s fees, as proposed in these proceedings and widely promulgated in communication with customers, are flawed and inflated in the following respects:

1. The proposed fees include an inflated cost for retention of legacy meters as argued in section A above;
2. The proposed fees include inappropriate Exclusion Costs, as argued in section B above;
3. The proposed fees include inappropriate costs for reading meters of customers who live in Undeveloped Areas, as argued in section C above;
4. The proposed fees include inappropriate exit fees, as argued in section D above; and
5. The proposed fees are further flawed with respect to the particulars argued in section E above.

We submit that BC Hydro’s enrollment data was generated on the basis of misinformation because it is based on proposed fees that are improperly inflated so as to constitute an artificial deterrent to customer participation in the opt-out program.

The defect in BC Hydro’s methodology is self-perpetuating because the flawed enrollment data results in the appearance of depressed participation rates which makes the per-premises opt-out costs appear to be higher, which, in turn, further

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depresses participation rates. BC Hydro has us engaged in a cycle of misinformation which has two effects: deterring apparent participation rates and increasing per premises opt-out costs. All of which serves BC Hydro's interest in minimizing the deployment of legacy and radio-off meters. The problem with this approach, for present purposes, is that it results in a warped representation of "program costs", "investigation costs" and "infrastructure costs" for the purpose of implementing Direction No. 4.

The necessary remedy is for the Commission to order BC Hydro to engage in further correspondence<sup>3</sup> with eligible customers so as to re-canvass participation rates in accordance with fees that are conditionally approved by the Commission and void of any inappropriate inclusions or inflations as referenced above. In consideration of the fresh enrollment data resulting from that process, the conditionally approved fees should be subject to re-assessment by the Commission prior to being finalized. The new enrollment data will impact on per-premises program costs.

**G. Deterrence and punishment are not legitimate bases for recovery under Direction No. 4**

Perceived participation rates certainly impact on BC Hydro's view of costs associated with the continued use of legacy meters and the installation and use of radio-off meters. This is apparent from the following excerpt from BC Hydro Submissions at paragraphs 28 and 29:

28. To forecast the costs associated with the continued use of legacy meters and the installation and use of radio-off meters, and to calculate the charges to be applied per customer to recover those costs, BC Hydro has had to assume values for certain key variables. These assumptions include the number of eligible customers who choose or are deemed to choose legacy and radio-off meters.

29. ... Certain forecast cost elements are sensitive to the number of Meter Choices Program participants while others are insensitive.

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<sup>3</sup> Any "meter choices" program correspondence between BC Hydro and its customers should inform customers of the existence of the proposed class action by Nomi Davis and the contact details of counsel with respect to that action.

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[emphasis added]

For the reasons cited above, the assumptions made by BC Hydro (as to the number of eligible customers who choose or are deemed to choose legacy and radio-off meters) are marred by fallacies, inflated costs and the deterrent effect of same.

The deterrent effect of the opt-out fees promulgated by BC Hydro (in its meter choices correspondence to eligible customers) is demonstrated on the face of the BC Hydro Submission at paragraph 34:

It is expected that despite BC Hydro's communications efforts to date, a considerable number of eligible customers who as of yet have not responded will choose a smart meter once they receive a bill with the charge and realize they are deemed to have chosen the legacy meter.

BC Hydro admits, at paragraph 52 of the BC Hydro Submission, that participation levels do have a bearing on the monthly opt-out charge.

By promulgating a high monthly charge, BC Hydro has managed to procure data suggestive of low participation rates. BC Hydro has, in turn, used those low participation rates to support high monthly charges.

The injustice of this approach is underscored by the fact that the opt-out fees proposed by BC Hydro have little to do with revenue recovery and everything to do with deterring customer participation in the opt-out program.

The punitive value of the proposed opt-out fees is more important than the financial revenue, which will amount to 0.000025% of BC Hydro's annual revenue. As such, the rationale behind the proposed fees is not cost recovery, in keeping with Direction No. 4, but elimination of the freedom of choice by way of deterrent. These fees are proposed for the wrong reason: to punish customers for refusing a smart meter and gradually erode the number of radio-off and legacy meter customers.

#### **H. Viability of a self-read program**

The following is submitted in response to paragraph 23 of the BC Hydro Submission with respect to the viability of a self-read program.

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BC Hydro asserts that regular and accurate meter readings are necessary to ensure that accurate bills are produced, however, BC Hydro's practice is not consistent with this principle. BC Hydro will not commit to a regular meter reading schedule and, in the case of recent legacy meter and radio-off customers, BC Hydro has declined to manually read meters with any regularity and, instead, has provided customers with estimated bills that betray BC Hydro's alleged commitment to accuracy.

BC Hydro asserts that there is potential for deliberate under-reporting of consumption or a lack of customer diligence in recording or submitting data as scheduled. In response, we submit that the potential for these discrepancies does not undermine the viability of a self-read program. Further, any under-reporting, inaccurate reporting or late reporting would ultimately be remedied by way of periodic manual meter reads and incidental billing reconciliations.

BC Hydro's assertion that it needs to manually collect interval data from radio-off meters every two months is inconsistent with the fact that BC Hydro has offered 60,000 customers the opportunity to retain their legacy meters.

BC Hydro asserts that a large-scale self-read program could result in several thousand self-reads, requiring an information technology investment. We submit that the Commission should require BC Hydro to quantify that investment, submit a proposal for same and compare that cost to the savings that would be effected by the elimination of regular manual reads.

Finally, we submit that BC Hydro's reasons for rejecting a self-read program reveal interests that are attributable to "all customers" and values that are not sufficiently proximate to "program costs", "investigation costs" or "infrastructure costs" so as to justify an attribution of costs to opt-out customers under Direction No. 4.

## **I. Limitations of Commission Decision**

The BC Hydro smart meter program is impugned before ongoing proceedings before the British Columbia Human Rights Tribunal and the British Columbia Supreme Court. The CSTS and Nomi Davis are litigants in those proceedings.

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We request that the Commission, in its reasons for decision, explicitly affirm that 1) the Commission's order is limited to the implementation of Direction No. 4 in accordance with section 3 of the *Utilities Commission Act*; and 2) the Commission, in making its order, makes no determination with respect to application of any other statute or common law principle to the BC Hydro smart meter program.

**All of which is respectfully submitted.**

Yours truly,



**DAVID M. AARON**

cc: clients  
cc: Interveners  
cc: Ian Webb