British Columbia Utilities Commission

In the Matter of
the *Utilities Commission Act*, R.S.B.C. 1996, c. 473
and
the British Columbia Hydro and Power Authority

Application for Approval of Charges Related to the Meter Choices Program

Submissions of the Director for Electoral Area "D"
of the Regional District of Central Kootenay

Background

As stated by B.C. Hydro in its submissions, on July 18, 2013, the British Columbia government announced, as a government policy, that the British Columbia Hydro and Power Authority (B.C. Hydro) would be offering new meter options and related services to certain customers.

Final Submissions of B.C. Hydro (January 24, 2013) paras. 2 & 3

1. That government policy was enacted on September 25, 2013 in *Direction No. 4* to the British Columbia Utilities Commission (the Commission), concerning the implementation of B.C. Hydro's "meter choices program".

Direction No. 4, B.C. Reg. 203/2012 (July 23, 2013)

2. On October 7, 2013, B.C. Hydro filed an Application for Approval of Charges, which is the subject of this proceeding.

Exh. B-1 - Application for Approval of Charges Related to Meter Choices Program (October 7, 2013)

3. On October 9, 2013, the Commission issued an Order granting advanced approval, pursuant to *Direction No. 4*, of the new tariff items and conditions related to the Meter Choices program effective October 25, 2013.

BCUC Decision and Order G-166-13 (October 9, 2013)

4. On October 11, 2013, the Commission issued an Order establishing the regulatory timetable for the B.C. Hydro Application.

BCUC Decision and Order G-167-13 (October 9, 2013)

The Basis of the Application

5. *Direction No. 4* is made pursuant to s. 3 (1) of the *Utilities Commission Act* (hereinafter the *Act*), which states:

> "Subject to subsection (3), the Lieutenant Governor in Council, by regulation, may issue a direction to the commission with respect to the exercise of the powers and the performance of the duties, including, without limitation, a direction requiring the commission to exercise a power or perform a duty, or to refrain from doing either, as specified in the regulation."
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> *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 3(1)

6. As B.C. Hydro submits, its application involves powers of the Commission found in sections 58 through 61 of the *Act*. Section 58 states in part:

> "58 (1) states that the commission may . . . after a hearing, determine the just, reasonable and sufficient rates to be observed and in force.
> (2) If the commission makes a determination under subsection (1), it must, by order, set the rates.
> (2.1) The commission must set the rates for the authority in accordance with . . . the prescribed guidelines, if any. . . ."

7. Section 1 of the *Act* defines "Rates" as including:

> "(a) a general, individual or joint rate, fare, toll, charge, rental or other compensation of a public utility,
> (b) a rule, practice, measurement, classification or contract of a public utility or corporation relating to a rate, and
> (c) a schedule or tariff respecting a rate;"

8. Appendix A of *Direction No. 4*, being a rule or practice relating to a rate, is thus a "rate".

9. Section 60 is concerned with setting of rates, and states, in part:

> "60 (1) In setting a rate under this Act
> (a) the commission must consider all factors which it considers proper and relevant affecting the new rate,
> (b) the commission must have due regard to the setting of a rate that
> (i) is not unjust or unreasonable within the meaning of section 59,
> (ii) provides to the public utility for which the rate is set a fair and reasonable return on any expenditure made by it to reduce energy demands, and
> (iii) encourages public utilities to increase efficiency, reduce costs and enhance performance,
> (b.1) the commission may use any mechanism, formula or other method of setting the rate that it considers advisable, and may order that the rate derived from such a mechanism, formula or other method is to remain in effect for a specified period, and
> (c) if the public utility provides more than one class of service, the commission must
> (i) segregate the various kinds of service into distinct classes of service,

(ii) in setting a rate to be charged for the particular service provided, consider each distinct class of service as a self-contained unit, and
(iii) set a rate for each unit that it considers to be just and reasonable for that unit, without regard to the rates set for any other unit.

(2) In setting a rate under this Act, the commission may take into account a distinct or special area served by a public utility with a view to ensuring, so far as the commission considers it advisable, that the rate applicable in each area is adequate to yield a fair and reasonable return on the appraised value of the plant or system of the public utility used, or prudently and reasonably acquired, for the purpose of providing the service in that special area.

(3) If the commission takes a special area into account under subsection (2), it must have regard to the special considerations applicable to an area that is sparsely settled or has other distinctive characteristics."

Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 60

10. For the purposes of s. 3 (1), the duties and powers of the Commission subject to direction by the Lieutenant Governor in Council are the duties and powers delineated and circumscribed by the *Act*.

11. The Commission has the power to amend a tariff under s. 58 by making a determination and setting a rate under s. 60 with due regard to s. 59. The Commission has no power to amend a tariff without making a determination and setting a rate under those sections. *Direction No. 4* does not instruct the Commission to refrain from exercising its power to make a determination and set a rate under sections 58 through 60.

12. Being outside the powers of the Commission, s. 3(3) and related sections 3(4) and 4(2) of *Direction No. 4* fail to comply with the requirements of s. 3(1) of the *Act* and, as such, is outside the realm of what is contemplated by s. 3(1) of the Act as to anything the Lieutenant Governor in Council may direct the Commission to do or refrain from doing.

13. Area "D" is aware that these circumstances raise constitutional questions and, as B.C. Hydro has pointed out, that the Commission has no jurisdiction over constitutional questions (with the exception of the *Charter*, as will be described later).

Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 3(4)
Administrative Tribunals Act, R.S.B.C. 1996, c. 45, s. 44

14. A constitutional question has, nonetheless, now arisen as to the propriety of *Direction No. 4*, and its applicability to the Commission, and calls into question this application, as well as the Commission's Decision and Order G-166-13 (October 9, 2013).

15. Area "D" observes, however, that the Commission has the power, under s. 104 of the *Act*, to seek the opinion of the B.C. Court of Appeal on a question of law by way of stated case, and Area "D" requests that the Commission seriously consider so doing.

Submissions on the Cost Recovery Issue

16. If, despite a jurisdictional constitutional question having arisen, the Commission proceeds with this application, Area "D" makes the following submissions concerning the cost recovery, which is to say, the amounts charged by B.C. Hydro for their meter "choice". Area "D" wishes to first review the applicability of the *Canadian Charter of Rights and Freedoms* (the *Charter*) with respect to fees which effectively constitute a penalty for disability or is otherwise discriminatory.

Charter Jurisdiction

B.C. Hydro

17. B.C. Hydro argues that the Commission has found that the *Charter* does not apply to FortisBC. Area "D" has joined a reconsideration application of that finding as an error of law. In any event, the Commission is not bound to follow its previous decisions.

Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 75

18. Section 32 (1) of the *Charter* states:

> "This Charter applies: . . . (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province."
>
> *Canadian Charter of Rights and Freedoms*, s. 32(1)

19. From the head note of *Eldridge* v. *British Columbia (Attorney General)*:

> "Legislatures may not enact laws that infringe the *Charter* and they cannot authorize or empower another person or entity to do so. Even though a legislature may give authority to a body that is not subject to the *Charter*, the *Charter* applies to all the activities of government whether or not they may be otherwise characterized as "private" and it may apply to non-governmental entities in respect of certain inherently governmental actions. Governments, just as they are not permitted to escape *Charter* scrutiny by entering into commercial contracts or other "private" arrangements, should not be allowed to evade their constitutional responsibilities by delegating the implementation of their policies and programs to private entities."
>
> "Two important points must be made with respect to this principle. First, the mere fact that an entity performs what may loosely be termed a 'public function', or the fact that a particular activity may be described as 'public' in nature, will not be sufficient to bring it within the purview of 'government' for the purposes of s. 32 of the *Charter*. In order for the *Charter* to apply to a private entity, it must be found to be implementing a specific governmental policy or program."
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> *Eldridge* v. *British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, 1997 CanLII 327, 151 D.L.R. (4th) 577; [1998] 1 W.W.R. 50; 46 C.R.R. (2d) 189; 38 B.C.L.R. (3d) 1

20. B.C. Hydro is a Crown corporation incorporated and continued under the *Hydro and Power Authority Act*. Sections 3 and 4 of that *Act* state:

> "3. (1) The authority is for all its purposes an agent of the government and its powers may be exercised only as an agent of the government.

(2) The Minister of Finance is the fiscal agent of the authority.
(3) The authority, on behalf of the government, may contract in its corporate name without specific reference to the government.
4. (1) The Lieutenant Governor in Council appoints the directors of the authority who hold office during pleasure.

Hydro and Power Authority Act, R.S.B.C. 1996, c. 212, ss. 3 & 4

21. B.C. Hydro is not merely a government agent, it is a veritable branch of government with no autonomy or independent existence.

22. In s. 1 of the *Clean Energy Act*, S.B.C. 2010, c. 22, "authority" is defined as having the same meaning as in s. 1 of the *Hydro and Power Authority Act*, being the "British Columbia Hydro and Power Authority".

"(1) In this section:
"private dwelling" means
(a) a structure that is occupied as a private residence, or
(b) if only part of a structure is occupied as a private residence, that part of the structure;
"smart grid" means the prescribed equipment;
"smart meter" means a meter that meets the prescribed requirements, and includes related components, equipment and metering and communication infrastructure that meet the prescribed requirements."
(2) Subject to subsection (3), the authority must install and put into operation smart meters and related equipment in accordance with and to the extent required by the regulations.
. . .
(5) The authority may, by itself, or by its engineers, surveyors, agents, contractors, subcontractors or employees, enter on any land, other than a private dwelling, without the consent of the owner, for a purpose relating to the use, maintenance, safeguarding, installation, replacement, repair, inspection, calibration or reading of its meters, including smart meters, or of its smart grid."

Clean Energy Act, S.B.C. 2010, c. 22

23. The government's smart-meter policy is further mandated in the *Smart Meters and Smart Grid Regulation*, B.C. Reg. 368/2010 to the *Clean Energy Act*.

24. Smart-metering in British Columbia and all that arises therefrom is a specific governmental policy goal mandated by the government through specific legislation. The B.C. Hydro Meter Choices Program is undeniably part and parcel of the BC government smart-meter policy and program. As such, the *Charter* applies to B.C. Hydro, a government entity, in its implementation of a specific policy of the government. As such, it easily meets the test in *Eldridge*.

<u>The Commission</u>

25. The Commission's decisions must likewise abide by the *Charter*:

"An adjudicator exercising delegated powers does not have the power to make an

> order that would result in an infringement of the *Charter*, and he exceeds his jurisdiction if he does so. This idea was very well expressed by Professor Hogg when he wrote "Any statute enacted by either Parliament or a Legislature which is inconsistent with the *Charter* will be outside the power of (ultra vires) the enacting body and will be invalid. It follows that any body exercising statutory authority, for example, the Governor in Council or Lieutenant Governor in Council, ministers, officials, municipalities, school boards, universities, administrative tribunals and police officers, is also bound by the *Charter*. Action taken under statutory authority is valid only if it is within the scope of that authority. Since neither Parliament nor a Legislature can itself pass a law in breach of the *Charter*, neither body can authorize action which would be in breach of the *Charter*": *Slaight Communications Inc.* v. *Davidson*, [1989] 1 S.C.R.1038; *McKinney* v. *University of Guelph*, [1990] 3 S.C.R. 229; *Ross* v. *New Brunswick School District No. 15*, [1996] 1 S.C.R. 825."
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> G. Garton, "Section 32(1) - Application of Charter", *The Canadian Charter of Rights Decisions Digest*, Justice Canada, Updated: April 2005 (CanLII), Heading #2, "State Action" at para 4. http://canlii.ca/en/commentary/charterDigest/s-32-1.html

26. "We do not have one *Charter* for the courts and another for administrative tribunals. This truism is reflected in this Court's recognition that the principles governing remedial jurisdiction under the *Charter* apply to both courts and administrative tribunals. It is also reflected in the jurisprudence flowing from *Mills* and the *Cuddy Chicks* trilogy according to which, with rare exceptions, administrative tribunals with the authority to apply the law have the jurisdiction to apply the *Charter* to the issues that arise in the proper exercise of their statutory functions.

> The jurisprudential evolution has resulted in this Court's acceptance not only of the proposition that expert tribunals should play a primary role in the determination of *Charter* issues falling within their specialized jurisdiction, but also that in exercising their statutory discretion, they must comply with the *Charter*."
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> *R.* v. *Conway*, 2010 SCC 22 (CanLII) at paras. 20 & 21, [2010] 1 SCR 765

27. B.C. Hydro also argues that the Commission has no jurisdiction over constitutional questions, and therefore no *Charter* jurisdiction, presumably referring to s. 3(4) of the *Utilities Commission Act* which imports s. 44 of the *Administrative Tribunals Act*, which states: "The tribunal does not have jurisdiction over constitutional questions."

> *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 3(4)
> *Administrative Tribunals Act*, R.S.B.C. 1996, c. 45, s. 44

28. Section 33(1) of the *Charter* states:

> "Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter."

29. "The essential requirement of form laid down by s. 33 is that the override declaration

must be an express declaration that an Act or a provision of an Act shall operate notwithstanding a provision included in s. 2 or ss. 7 to 15 of the *Charter*. With great respect for the contrary view, this Court is of the opinion that a s. 33 declaration is sufficiently express if it refers to the number of the section, subsection or paragraph of the *Charter* which contains the provision or provisions to be overridden. ”

> *Ford* v. *Quebec (Attorney General)*, 1988 CanLII 19 (S.C.C.) at para. 33, [1988] 2 S.C.R. 712; 54 D.L.R. (4th) 577; 36 C.R.R. 1; 10 C.H.R.R. 5559
> URL: http://canlii.ca/t/1ft9p

30. The general language of s. 44 of the *Administrative Tribunals Act* does not contain an express declaration that the legislature intended to over-ride any section of the *Charter* at all in the Commission’s jurisdiction under *Utilities Commission Act*, and fails to meet the express requirements of s.33(1). The Commission, as a quasi-judicial body, has complete and unfettered jurisdiction over *Charter* issues.

31. Further, s. 59 of the *Utilities Commission Act* states:

> “(1) A public utility must not make, demand or receive
> (a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or
> (b) a rate that otherwise contravenes this Act, the regulations, orders of the commission or any other law.
> (2) A public utility must not
> (a) as to rate or service, subject any person or locality, or a particular description of traffic, to an undue prejudice or disadvantage, . . .”
> *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 59

32. Area “D” submits that s. 59, read through the lens of the *Charter*, bolsters and underscores the Commission’s duty at law to avoid discriminatory and prejudicial rate structures and “cost recovery” charges.

33. This is reinforced further by section 24(b) of the *Act* which requires the Commission to "make examinations and conduct inquiries necessary to keep itself informed about...", not just the *Act* and regulations, but "any other law".

> *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 24

34. Further, as B.C. Hydro candidly acknowledges, *Direction No. 4* is a direct expression of government policy in the form of an enactment. The Commission has been placed in the position of adjudicating government policy between B.C. Hydro and its residential customers. *Direction No. 4* and all stemming therefrom, including the cost recovery provisions, unavoidably must be viewed through the lens of the *Charter*.

<u>Application for Cost Recovery Charges</u>

35. *Direction No. 4* directs the Commission to recover costs from applicable customers at applicable residences where a legacy meter or radio-off meter is installed (s.3 (1)(a)(i), failing any or all of which such costs are to be recovered from the customer base at large (s. 3(1)(a)(ii).

36. Area "D" first notes that, given its most liberal interpretation, *Direction No. 4* appears to allow for potentially the entire cost of the meter choices program being borne by the customer base as a whole, in short that no additional charges be involved with respect to participation in the meter choices program.

The Issue of Disability

37. Area "D" is well aware that the Commission has recently considered the issue of a causal connection between RF emissions and the symptoms of "electromagnetic hypersensitivity" (EHS), or more precisely "idiopathic environmental intolerance attributed to electromagnetic fields" (IEI-EMF). Area "D" reiterates and expands its recent argument in the FortisBC reconsideration application.

38. Area "D" submits that the question is not whether or not there is a causal connection between RF emissions and the symptoms of EHS, or whether or not EHS, as such, constitutes a disability, but rather whether a person, exhibiting severe and persistent symptoms associated with EHS, and which are unattributable to any other cause, is disabled.

39. In a recent decision the Commission posed the following question to FortisBC:

> "Does FortisBC consider the 'nocebo effect', as referenced in the Exponent report and in other academic studies of the potential link between RF/EMF radiation and human health, to be a significant source of negative effects for some of these concerned stakeholders?"

to which FortisBC answered:

> "Yes. Scientific research on radio frequency fields and assessments of this research by health and scientific agencies has described the belief and perception of some individuals that they can detect or develop symptoms in the presence of these fields as unrelated to the physical stimulus itself (referred to as electromagnetic hypersensitivity). As stated by the World Health Organization 'The symptoms are certainly real and can vary widely in severity. Whatever its cause, EHS has no clear diagnostic criteria and there is no scientific basis to link EHS symptoms to EMF exposure.' "
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> BCUC Decision and Order G-220-13 (July 23, 2013) at p. 134

40. The Commission's decision quoted further from the WHO as follows:

> "Treatment of affected individuals should focus on the health symptoms and clinical picture, and not on the person's perceived need for reducing or eliminating EMF in the workplace or home. This requires a medical evaluation to identify and treat any specific conditions that may be responsible for the symptoms."

41. The Commission's WHO quote then describes the need for a psychological evaluation, an assessment of the workplace and home for factors that might contribute to the presented symptoms, concluding:

> "For EHS individuals with long lasting symptoms and severe handicaps, therapy directed at reducing those symptoms, including, if necessary, controlling factors

in the environment known to have adverse health effects of relevance to the patient."

BCUC Decision and Order G-220-13 (July 23, 2013) at pp. 134-135

42. The Commission had previously quoted Dr. Margaret Sears:

"And so the physician first of all has ruled out other possibilities, and then it's a repeatable phenomenon that you get these symptoms in association with the exposure."

and:

"The individual finds that their symptoms occur with an exposure, and that when that exposure is removed, they get better . . .

BCUC Decision and Order G-220-13 (July 23, 2013) at pp. 132-133

43. The WHO, the Commission, FortisBC, and Dr. Sears were thus essentially in agreement that the symptoms of EHS are real, and that, if sufficiently severe, can be disabling. The fact that, at least so far, no causal scientific relationship can be demonstrated between RF emissions and the symptoms of EHS is, Area "D" submits, irrelevant. "A distinction should be drawn between the question of whether a disability exists and the question of whether medical science has a label for it or has determined its cause."

Brewer v. *Fraser Milner Casgrain LLP*, 2006 ABQB (CanLii) at paras. 29 & 32 (rev'd on other grounds 2008 ABCA 435 (CanLii)

44. Once all other factors have been ruled out, and removal of radio frequency emitting devices results in the alleviation of symptoms, in the immortal words of Sherlock Holmes: ". . . when you have eliminated the impossible, whatever remains, however improbable, must be the truth". A disability is a disability.

45. Toronto's Women's College Hospital Environmental Health Clinic is treating EHS patients, as is the Integrated Chronic Care Service (ICCS) for environmental sensitivities and complex chronic conditions (formerly known as the Nova Scotia Environmental Health Centre) in Halifax, Nova Scotia.

46. Appendix A of this Submission is a statement from the Women's College Hospital issued on June 11, 2012 which clearly demonstrates that regardless of the cause, EHS patients are being treated for this illness in Canada. Area "D" submits that if persons residing in Canada are being treated for this illness, then those residing in B.C.Hydro's service area should, in the provision of services to them, be accommodated rather than penalized for their illness.

47. If a medical doctor or specialist in the field of environmental health is prescribing avoidance as part and parcel of the treatment for this illness, why should not B.C. Hydro accommodate that customer in its provision of services as it accommodates disabilities in its workplace?

48. At a minimum, B.C. Hydro needs a protocol for addressing the needs of these customers with a chronic and debilitating disease, who are most likely not working at full earning capacity and more often not working at all. Facing additional living costs in an already diminished

income situation can in and of itself only further exacerbate the illness itself.

49. The forced intrusion of smart-meters, no matter how inconsequential to the average customer, is like an invasion of some microbe to a healthy body in EHS persons with compromised immune systems and failing and fragile health, and impacts on ability to function on a day to day basis can be severe.

50. The health of a democracy should not simply be assessed in how we treat the ablest and brightest in our society, but how we treat the most vulnerable, the most sick and the most fragile. They truly require our compassion and understanding if we are to be thought of as a democratic society.

51. The fact remains, however, that there are persons in British Columbia who obtain their electricity from B.C. Hydro who are sensitive to electricity and the operation of smart-meters. In accordance with s. 24 of the *Act*, the Commission needs to ensure that the B.C. Hydro rate structure provides reasonable accommodation for customers afflicted with idiopathic environmental intolerance attributed to electromagnetic fields.

52. "What does discrimination mean? The question has arisen most commonly in a consideration of the Human Rights Acts and the general concept of discrimination under those enactments has been fairly well settled. . . .

> The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant. If it does, in fact, cause discrimination; if its effect is to impose on one person or group of persons obligations, penalties, or restrictive conditions not imposed on other members of the community, it is discriminatory."
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> *Andrews* v. *Law Society of British Columbia*, 1989 CanLII 2 (SCC) at , [1989] 1 SCR 143; 56 DLR (4th) 1; [1989] 2 WWR 289; 25 CCEL 255; 36 CRR 193; 10 CHRR 5719; 34 BCLR (2d) 273

53. In its final submission, B.C. Hydro misconstrues the application of s.15 of the *Charter*. They state that it is the provincial government and not the Commission or B.C. Hydro that needs to address the application of the *Charter*. Besides being the agency supplying electricity to the disabled customer, for all intents and purposes, B.C. Hydro is the government.

54. B.C. Hydro, to date, has failed to provide any information on how many residential customers oppose installation of smart-meters on the basis of fear of injury to their health. The first basic question that needs to be asked of B.C. Hydro is how many customers have come forward claiming an EHS sensitivity?

55. Area "D" further submits that it is *prima facie* demeaning and discriminatory to force a disabled person to pay a penalty as a result of their disability, in effect, to apply a tax or surcharge on the severely limiting imperative imposed upon them by their disability to avoid exposure to radio frequency emitting devices.

Other Issues

56. *Direction No. 4*'s Appendix dictates that the only persons entitled to participate in the meter choices program are those customers who had managed to retain an analog meter at the time the program began.

57. Customers who were unable to prevent, through no fault of their own, installation of a smart-meter, and often despite locked doors and posted notices to the contrary, are excluded from the program. As related in numerous media accounts, as well as many written communications to the Commission, hundreds of customers, possibly thousands, were coerced outright, or otherwise involuntarily forced into accepting smart-meters.

58. In accord with s. 59(2)(b) of the *Act*, as applied with consideration of s. 2(d) of the *Charter*, all customers of B.C. Hydro should be free to decide if they want to be associated with a smart-meter or have a legacy meter or a radio-off meter, and not just those who, through either chance or ferocity, had managed to retain an analog meter on their property until the government issued an Order-in-Council for a specified opt-out program.

59. Under s. 59(2)(b) of the *Act* read together with the *Charter*, the government, and the Commission, cannot allow B.C. Hydro to simultaneously allow some customers to keep legacy meters while simultaneously denying the same right to others in the same class.

60. The Director for Area "D" was contacted by telephone by a constituent from Meadow Creek who is a customer of B.C. Hydro, on the evening of February 6th, whose story underscores the mess that installation of these meters has become. This customer telephoned to ask if he was going to be cut off from his power supply if he continued to refuse to pay the legacy meter charge of $35 per month, noting that it doubled the cost of his service from $35/month to $70/month, in a location in which B.C. Hydro acknowledges that a smart-meter could not be installed anyway, due to the remoteness of the residence and property.

61. Clearly customers in remote and rural BC, who are to be charged an additional $35 per month for refusing to exchange their analog meter, in a situation where an installed smart-meter could not function anyway, are being discriminated against in terms of the power and authority that exists under s. 60.3 for the Commission to set rates for those customers who will likely never be served by the smart grid and smart-meter program.

62. Not only was one group of residential customers excluded by government policy from participating in an opt-out program, but by consequence of exclusion those allowed to participate in the opt-out program are forced to pay a higher cost to opt out, which, Area "D" submits, are clear violations of s. 59 and s. 60 of the *Act* and s. 2.d of the *Charter*.

Self-Reading Meters

63. At paras. 21-27 of its Final Submission, B.C. Hydro acknowledges that there is no legal impediment as to why customers with legacy meters could not read them, although radio-off meters require a hand-held device for interval and event data. B.C. Hydro then explains that since personnel would be in the area reading other legacy and radio-off meters anyway, there will

be virtually no cost savings. Besides which, the Commission has already ruled that radio-off meters only need to be read by the utility every two months.

64. S. 75 of the *Act* requires that the Commission's decisions be "on the merits and justice" of the case and that the Commission is not bound to follow its own decisions. S. 60 grants the Commission power and authority to consider a wide variety of issues when setting rates, including, at s. 60.3: "special considerations applicable to an area that is sparsely settled or has other distinctive characteristics."

65. The community of Johnson's Landing, among other intervenors in this hearing, have asked B.C. Hydro and the Commission to consider offering a self-read program as an integral part of the Meter Choices Program, and Area "D" submits that self-reading is likely the only way that residential customers with low incomes who choose not to accept a smart-meter could reduce their monthly charges for opting out. Area "D" submits that to date B.C. Hydro has not submitted a map showing how Meter Choices Program customers are clustered, as well as sparsely populated locations in which smart-meters are not going to function.

66. Idaho Power Corporation, in its decision to install smart-meters, determined that it was probably not cost effective to install these meters to about 1% of their customers because of the remote rural isolation of the service. Nowhere has B.C. Hydro identified the percentage of ineffective smart-meter installations, and so, in addition to reading legacy and radio-off meters of customers who have chosen to opt-out, personnel will be reading the meters of those customers who are too remote to be in the smart-meter wireless program as well.

67. B.C. Hydro, in arguing that there is no cost differential, has not provided any figures in support. Area "D" submits that B.C. Hydro has linked together a series of loosely connected and unsupported objections simply to avoid seriously considering a self-read program.

68. In answering BCUC IR 2.29.3, B.C. Hydro acknowledges and provides evidence that it now has the capability to accept account-identifiable structured web forms and in fact received at least 620 self-reporting meter reads in 2012. What B.C. Hydro failed to make clear is whether these self-reported meter reads were electronically account-identified and/or web form reported. In this regard it is observed, for example, that the Federal Government of Canada has had an automated verbal self-reporting system for its Employment Insurance program for over a decade, and Pacific Blue Cross has had a web-based reporting form for nearly five years.

69. All B.C. Hydro has done to date, including the use of in-camera hearings as an excuse, is to obfuscate and preclude any serious consideration of a self-reporting program. Given that governments and corporations all over the world, including banks, are using electronic technology for financial and reporting-based transactions, is it fiscally prudent for B.C. Hydro to refuse to adopt such basic operational measures?

70. If the Government of Canada and Pacific Blue Cross can process millions of dollars of transactions and hundreds of thousands of reports through electronic reporting systems, are B.C. Hydro's claims that self-reporting of electrical consumption from a legacy meter is prone to error and potential theft credible?

71. Area “D” submits that B.C. Hydro has not even bothered to investigate the possibility of a self-reporting program or what the cost savings might be. FortisBC, for example, has had a self-reporting system for years, both by telephone and on-line.

http://www.fortisbc.com/NaturalGas/Homes/AccountsAndBilling/YourMeter/Pages/Enter-your-own-meter-reading.aspx

72. An entire community, Johnson's Landing, has come forward and said that they want to self-read their meters, something that millions of persons worldwide do with various businesses and governmental institutions on a daily basis.

73. Area “D” submits that, if hundreds, if not thousands, of remote and rural B.C. Hydro residential customers are not going to benefit from the smart-meter program because they will not be hooked up wirelessly, they should not be discriminated against by being forced to pay a $35 a month charge to keep their analog meter.

74. At para. 30 in its Final Submission, B.C. Hydro reports that only 450 persons have signed up for radio-off meters whereas 19,000 appeared to want to keep their analog meter by December 13, 2013 - nearly 4 times the estimate that B.C. Hydro gave to the Commission. Instead of the 50/50 split of legacy versus radio-off that B.C. Hydro predicted, the actual ratio is 42.2:1.

75. Area “D” submits that B.C. Hydro estimates of how many customers want to keep their analog meter are wholly unreliable and problematic in terms of the Commission setting fair and equitable rates for legacy and radio-off meters for residential customers. In fact Area “D” submits that the only fair and equitable way to deduce the true cost of self-read meters is for the Commission to direct B.C. Hydro to run a pilot project in, for example, Johnson's Landing and use field testing to determine true costs of a self-read program, and encourages the Commission to do so.

<u>Conclusion</u>

76. Area “D” believes that it has raised a constitutional question as to the validity of the s. 3(3) and related sections 3(4) and 4(2) of *Direction No. 4*.

77. Area “D” submits that, regardless of 4.2.2 (b) of the Appendix to *Direction No. 4*, Meter Choice should be granted to every B.C. Hydro customer regardless of the type of meter in place as of any arbitrarily chosen date.

78. The Meter Choice rate structure should not penalize disabled persons on account of their disability, or persons in remote areas.

79. Consideration should be given to distributing the cost of the Meter Choice Program amongst the entire B.C. Hydro customer base.

80. The Meter Choice rate structure should accommodate self-read metering as a means of lowering the cost of administering service to legacy meters and to isolated sites for which the

smart-meter program is not feasible.

81. Area “D” has read the B.C.P.I.A.C. Final Submission and supports the general thrust of the analysis of actual costs and charges, especially the sections entitled Alternative Methods of Meter Reading and Meter Reading Frequency, Setting on Bi-Monthly Basis and Low Income Opt-Out Subsidy.

Afterword

82. In April of 2010 the Regional District of Central Kootenay (R.D.C.K.) Board adopted the Kootenay Lake and Lardeau Valley portion of Electoral Area “D” Official Community Plan Bylaw No. 996, 2009 which, at 8.0 Commercial and Industrial, General Commercial (C1) policies, 9, page 18 and 19 specifically states that the Board:

> “Supports the right of communities to be informed of any changes to the electromagnetic spectrum, by all operators of cell phone towers, wi-fi systems, microwave systems, etc, that create man made electromagnetic fields; and also supports the right of communities to propose zoning designations that apply to these operations.”

83. In September 2011, the Union of B.C. Municipalities, which represents 100% of the elected local governments in British Columbia, endorsed the following resolution at their AGM:

> “Therefore Be It Resolved that a moratorium be placed on the mandatory installation of wireless smart metres until the major issues and problems identified regarding wireless smart meters are independently assessed and acceptable alternatives can be made available at no added cost to the consumer.”

84. On January 19th, 2012, the R.D.C.K. Board passed the following resolution:

> “In consideration that FortisBC is the hydro service provider for a significant portion of the RDCK population, we recommend FortisBC commit to proactively engage in public discussion on potential impacts of the AMI program, including impacts of specific technologies considered, and that they commit to outline a clear "opt out" policy for public discussion, especially as it relates to health concerns.”

85. Finally on April 12, 2012, the R.D.C.K. Board passed the following resolution:

> “Be It Resolved that the Board supports the right of any property owner not to have smart-meters or any smart-meter adjunct equipment placed on their property without their express written permission, especially as it relates to health issues and concerns.”

86. Subsequent to these adopted policies I wish to go on the record as stating that, having served on the U.B.C.M. Board since September 2012, and as President of the Association of Kootenay Boundary Local Governments since April of 2012, while I support these policies, I am only appearing in these hearings on behalf of my constituents in Area “D” of the R.D.C.K. and more specifically the residents and property owners of Johnson's Landing.

87. Very clearly, however, elected local government officials, including a majority of the

R.D.C.K. Board, have consistently asked that their constituents be given choice around installation of smart-meters, especially as it relates to any health concerns and issues their constituents may have with installation on their property. By and large it is observed that the Utilities Commission and the two major utilities, FortisBC and British Columbia Hydro Power and Authority, have not done a good job of accommodating customers with health issues concerning installation of smart-meters.

All of Which is Respectfully Submitted,

Andy Shadrack
Director, Area D
Regional District Central Kootenay

The effects of invisible waves

June 11, 2012

The world is becoming dominated by wireless technology which is constantly emanated as micro, radio and extremely low frequency waves through the air. Researchers are studying the effects of constant exposure to these waves and how it impacts the human body.

Cell phones, cell phone towers, wireless internet routers, cordless phones and power lines of all sorts have all been recognized as possible contributors to an environmental health condition called electromagnetic hypersensitivity (EMS) caused by significant exposure from radio waves.

EMS symptoms include poor sleep, fatigue, headache, nausea, dizziness, heart palpitations, memory impairment and skin rashes. Patients' reactions vary, some requiring life-altering changes to minimize exposures as much as possible.

The first step for patients having these symptoms is to see their family physician. From there, they are usually referred to a specialist, like those in the Environmental Health Clinic at Women's College Hospital (WCH). Our experts understand sensitivities like EMS and are diligently trying to further delineate its complexities, educate the medical establishment and manage patients.

That's why on May 23, our Environmental Health Clinic hosted physicians, experts and patients at WCH for a day of interactive lectures, to share and discuss ideas about the issues surrounding EMS.

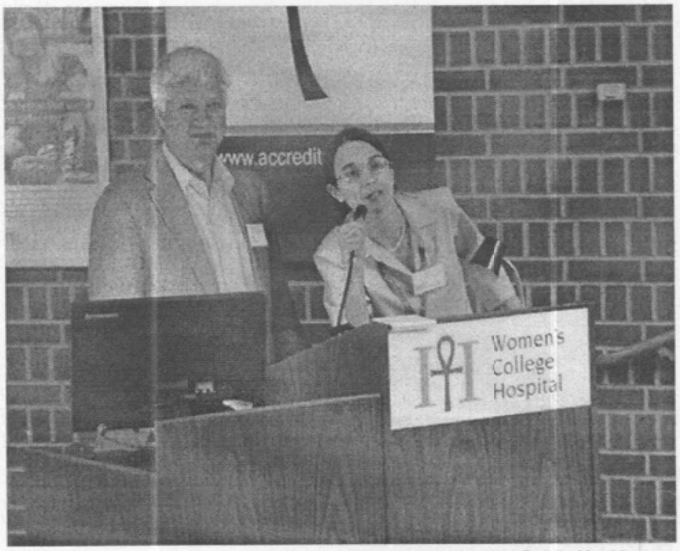
"We need to create more awareness about this condition," said Dr. Riina Bray, medical director, Environmental Health Clinic, WCH. "Health-care practitioners need to better understand EMS so they can help their patients prevent and manage their symptoms. The public needs to know how to protect themselves from the broad range of health impacts electromagnetic fields have on their minds and bodies."

Dr. Magda Havas, associate professor of environmental and resource studies, Trent University, presented *Electromagnetic sensitivity: Is it psychological or physiological?* She challenged the critics' suggestion that symptoms are solely psychological by providing real examples of patients whose symptoms subsided when wireless technology was removed from their environment. Scientifically sound guidelines for safety were also reviewed, with the knowledge that the standards in North America fall abysmally short of those elsewhere.

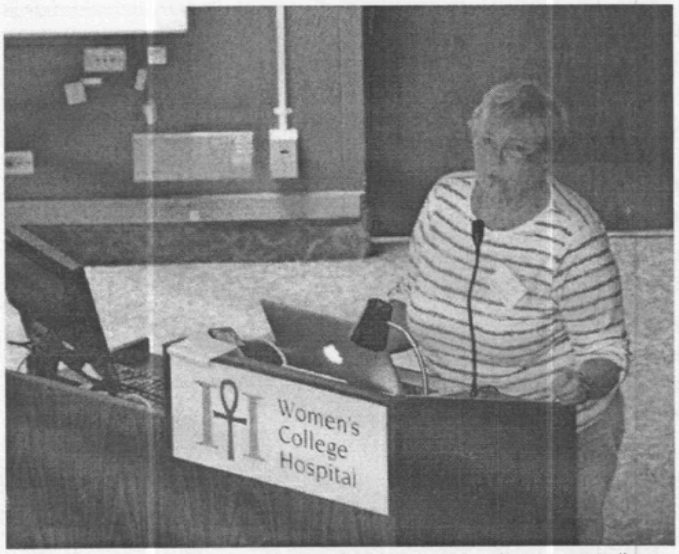
A grand rounds lecture featuring Dr. Ray Copes, chief, environmental and occupational health, Public Health Ontario, discussed EMS from a public health perspective. Dr. Copes cited the difficulties in comparing research because there is no one universally-accepted definition of the condition.

In the afternoon, participants had the opportunity to interact in small groups and discuss next steps for patient care, government action and community collaboration.

"Women's College Hospital is leading the way by hosting workshops like this," said Dr. Bray. "Working together is the first step to creating a mutual understanding of electromagnetic hypersensitivity and being able to care for and treat patients in the best way possible."



Dr. Ray Copes, chief, environmental and occupational health, Public Health Ontario and Dr. Riina Bray, medical director, Environmental Health Clinic, WCH



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