

BRITISH COLUMBIA UTILITIES COMMISSION

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
2015 RATE DESIGN APPLICATION
Project No. 3698781**

Responding Argument of:

**British Columbia Old Age Pensioners' Organization,
Active Support Against Poverty,
BC Poverty Reduction Coalition,
Council of Senior Citizens' Organizations of BC,
Disability Alliance BC,
Tenant Resource and Advisory Centre and
Together Against Poverty Society**

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1. INTRODUCTION

This is the response of the BC Old Age Pensioners' Organization, Active Support Against Poverty, BC Poverty Reduction Coalition, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, Together Against Poverty Society, and Tenant Resource & Advisory Centre, known collectively in regulatory processes as "BCOAPO *et al.*," to BC Hydro's September 26, 2016 Final Argument in the Company's 2015 Rate Design Application (2015 RDA).

In this response, we provide some comments on the context surrounding BC Hydro's 2015 RDA. We then review each of BC Hydro's residential, general service and transmission rate and terms and conditions proposals. Finally we respond to BC Hydro's submissions on the Commission's jurisdiction to implement low income rates.

2. CONTEXT

Implications of BC Hydro's F2017 – F2019 Revenue Requirements Application

At paragraphs 21-23 of its Final Argument, BC Hydro discusses the Evidentiary Update (Exhibit B-37) that it filed in this proceeding after it filing the F2017 – F2019 Revenue Requirements Application (RRA) with the Commission. In fact, there are three major changes related to BC Hydro's RRA that are relevant to the 2015 RDA:

- i. **Lower Load Forecast** – Compared to the (pre-DSM) load forecast used in BC Hydro's 2013 Integrated Resource Plan (IRP),¹ the current Load Forecast² is considerably lower in F2017 through to F2023. This means that there will be less kWh/kW over which to recover BC Hydro's revenue requirement. While this has no impact in the short-term due to the rate caps currently in place, the decreased load forecast will likely lead to more uncollected revenue accruing in the Rate Smoothing Account, and therefore BC Hydro's rates will probably increase even more over the long-term in order for BC Hydro to recover its costs.
- ii. **Supply/Demand Balance** – Compared to the 2013 IRP, BC Hydro's need dates for additional capacity and energy are now considerably later (2022 for Energy and 2020 for Capacity as opposed to 2017 for both in the 2013 LTEP.³
- iii. **Long Range Marginal Cost (LRMC)** – The LRMC value is now at the low end of the range discussed in the 2013 IRP.⁴ BC Hydro uses the LRMC in the design of many of its rates. Any move to alter the design of the rates in order

¹ Exhibit B-1, p. 2-4.

² BC Hydro F2017-F2019 Revenue Requirements Application, p. 3-29:
http://www.bcuc.com/Documents/Proceedings/2016/DOC_46852_B-1-1_BCH_RevenueRequirements-App.pdf.

³ Exhibit B-37, p. 1.

⁴ Exhibit B-37, p. 9.

to incorporate the lower LRMC values is likely to create intra-class bill impacts – particularly for low use customers in each class (since the LRMC is typically used as a benchmark for the rate applicable to incremental consumption).

These changes demonstrate that BC Hydro's rates are going to continue to rise for the foreseeable future, and it is therefore important that BC Hydro begin offering BCOAPO's proposed Essential Services Usage Block (ESUB) rate, the Crisis Intervention Fund, low income Terms and Conditions, and an expanded Energy Conservation Assistance Program in order to mitigate rising rates.

BC Hydro's Rate Design Priorities

BC Hydro has refocused its rate setting objectives based on the Bonbright principles to put emphasis on customer understanding, rate stability, and fairness (i.e. cost reflectiveness),⁵ and has de-emphasized efficiency relative to its priorities in BC Hydro's 2007 RDA.

BCOAPO supports the emphasis on rate stability. Given the outlook for future general rate increases, rate design should not unnecessarily add to the impact that customers will see in the coming years.

BCOAPO also supports the emphasis on fairness. Fairness and cost reflectivity are consistent with the principles BCOAPO uses with respect to its proposed ESUB rate, the Crisis Intervention Fund, and the low income Terms and Conditions.

While BCOAPO generally supports the prioritization that BC Hydro has assigned to the rate setting objectives, BCOAPO is of the view that the efficiency objective cannot be entirely overlooked. It is important to promote price signals that encourage efficient use and discourage inefficient use. However, it is also important that the rates applicable to customers along with the associated terms and conditions of service facilitate, to the extent possible, the efficient operation of BC Hydro. Indeed, improving the efficient operation of BC Hydro underlies much of BCOAPO's proposals in this proceeding.

Efficient utility operations are important because only through efficient operations can a utility such as BC Hydro provide "least cost service."⁶ Providing least-cost service, in turn, is the way to minimize rates to customers.

The efficiency criterion articulated by Bonbright, of course, has been explicitly incorporated into the Commission statutory charge. Section 60 of the *Utilities Commission Act* ("UCA")⁷, subsection 60(1)(b), provides that the Commission "must have due regard in the setting of a rate. . .to encourage public utilities to increase efficiency, decrease costs and enhance performance."⁸ BCOAPO has properly noted that "[w]hile the Company asserts that this "efficiency criterion" applies only to the

⁵ Exhibit B-1, p. 1-20.

⁶ Exhibit C2-12, Direct Testimony of Roger Colton, pp. 65 – 66 (PDF pp. 70-71).

⁷ [RSBC 1996] c. 473.

⁸ Exhibit B-1, p. 2-4.

procurement of energy and capacity resources, there is nothing in the language of the statute which supports this limitation. In fact, efficiency of operations extends to all elements of the Company's provision of service."⁹

In fact, as Roger Colton noted,

efficiency of operations extends to all elements of the Company's provision of service... However, these evaluations provide empirical support for the proposition that adopting an Essential Services usage block will allow the Commission to ensure that BC Hydro will "increase efficiency, decrease costs and enhance performance" as required by the *UCA* by improving bill collection and reducing the costs of low-income nonpayment.¹⁰

As BCOAPO has demonstrated, the ESUB will promote increased efficiency for BC Hydro. ESUB "is a mechanism through which BC Hydro can simultaneously address affordability concerns, improve cost reflectivity in rates, and improve the efficiency of its operations and reduce overall operating costs."¹¹

Moreover, BCOAPO has overwhelmingly documented that its proposed low-income terms and conditions will improve the efficiency of BC Hydro's operations. BCOAPO has shown that

[t]he ultimate conclusion is that BC Hydro is spending more and more collection resources to obtain fewer and fewer accounts being paid, involving even fewer dollars, and to enter into payments plans that remain unsuccessful despite noticeably more collection activity being expended. The process is not only ineffective, but inefficient as well.¹²

BCOAPO's proposed low-income terms and conditions will address these problems, improve the efficient operations of BC Hydro, and help control the level of rates in both the short- and long-term.

3. BC HYDRO'S PROPOSALS

In the sections below, BCOAPO provides comments on each of BC Hydro's proposals and orders sought. BCOAPO has already provided submissions in the expedited review processes for the following components of the 2015 RDA:

- the F2016 Cost of Service (COS) Study¹³;

⁹ BCOAPO Final Argument on BCOAPO Proposals, p. 59. At Exhibit B-5, BCOAPO 1.7.1, BC Hydro's asserts that the "efficiency criterion" applies only to the procurement of energy and capacity resources.

¹⁰ Exhibit C2-12, Direct Testimony of Roger Colton, p. 18 (PDF p. 23).

¹¹ Exhibit C2-12, Direct Testimony of Roger Colton, p. 13 (PDF p. 18).

¹² Exhibit C2-19, BCOAPO Response to BCUC 1.12.2, p. 25.

¹³ Commission Order G-47-16.

- the Medium General Service (MGS) and Large General Service (LGS) pricing proposal for customers without historical baselines to take service at 100 percent Part 1 pricing¹⁴;
- the Freshet rate pilot for Transmission Service customers¹⁵;
- the Transmission Stepped Rate RS 1827 (Exempt Customers), RS 1852 (Modified Demand), RS 1853 (IPP Service Station) & General Service Rate RS 1253 (IPP Service Station)¹⁶; and
- changes to the Minimum Reconnection Charges in BC Hydro's Electric Tariff.¹⁷

3.1. BC Hydro Residential Rate Proposals

3.1.1. RIB Rate – RS 1101/RS 1121

BC Hydro proposes to maintain the status quo with respect to its residential default rate, the Residential Inclining Block (RIB) rate (RS 1101/RS 1121).¹⁸ Specifically, BC Hydro proposes to maintain the Step 1/Step 2 threshold, the ratio between the two Steps, and the basic charge.¹⁹

The intent of the RIB rate is conservation²⁰; consistent with BC Hydro's general Bonbright criteria prioritization, BC Hydro prioritized customer understanding (in particular, bill impacts), fairness, and rate stability given that the RIB rate is performing as expected.²¹

BCOAPO supports maintaining the status quo RIB rate as proposed by BC Hydro.

BC Hydro's Preferred Pricing Principle

BC Hydro's preferred pricing principle for F2017-F2019 is to continue with the principle approved in Order No. G-13-14; that is, uniformly increasing the Step 1 energy rate, the Step 2 energy rate, and the basic charge by the amount of the approved RRA rate increases effective April 1, 2016, 2017 and 2018.²² The proposed RIB pricing principles were approved on an interim basis for F2017 through an interim order in the F2017-

¹⁴ http://www.bcuc.com/Documents/Arguments/2016/DOC_45379_01-08-2016_BCOAPO_Final-Argument-MGS-LGS.pdf.

¹⁵ Commission Order G-17-16.

¹⁶ http://www.bcuc.com/Documents/Arguments/2016/DOC_45668_02-05-2015_BCOAPO_Final-Argument.pdf.

¹⁷ Exhibit C2-3.

¹⁸ Exhibit B-1, p. 5-3; BC Hydro Final Argument, para. 41. The RIB rate was originally approved by the Commission in Order No. G-124-08 and made effective on October 1, 2008.

¹⁹ BC Hydro Final Argument, para. 41.

²⁰ BC Hydro Final Argument, para. 44.

²¹ Exhibit B-1, p. 5-30, Table 5-7; Exhibit B-5, BCOAPO 1.75.1.

²² BC Hydro Final Argument, para. 42.

2019 Revenue Requirements Application²³; BC Hydro is currently seeking a final order approving continuation of the RIB pricing principles for each of F2017 to F2019.²⁴

BC Hydro compared its preferred pricing principle (or “Option 1”, i.e., to apply RRA increases equally to all three RIB elements) with “Option 2” (to apply RRA increases to Step 1 and the basic charge, while holding Step 2 at its current level) using the Bonbright principles, and concluded as follows:

- Option 1 is more easily understood by customers, and it is better from a bill impact perspective for the majority of residential customers²⁵; and
- Option 2 increases to the Step 1 rate results in higher bill impacts for most customers, including low income customers.²⁶ Specifically, BC Hydro confirmed that approximately 80% of residential customers and approximately 80% of low income residential customers would be worse off under Option 2 than Option 1 (i.e. would have bill increases that were at least 1% higher in F2017 under Option 2 versus the proposed RIB rate).²⁷

BCOAPO agrees that the RRA increase should be applied equally to all three elements of the RIB rate as this is preferable from a bill impact perspective for the majority of residential customers.²⁸ While applying all increases to the Step 2 rate would lower bills for low income customers with low electricity usage, using this approach would have a detrimental bill impact on low income customers with higher usage. Therefore, BCOAPO supports BC Hydro’s proposal to apply all RRA increases equally all three RIB rate pricing elements—namely, Step 1, Step 2 and the basic charge. However, for the reasons outlined in BCOAPO’s September 26, 2016 submission, BCOAPO has put forward the ESUB rate and other proposed low income programs as a way to mitigate some of the rate increases for all low income customers, whether they are high or low use.

Notwithstanding BCOAPO’s support for maintaining the status quo RIB rate and BC Hydro’s preferred pricing principle, we provide some comments below on specific aspects of the RIB rate.

RIB Rate Basic Charge Recovery of Customer Costs

BC Hydro states that the current RIB rate basic charge recovers about 45% of customer-related costs, an amount which it also states is in line with other jurisdictions.²⁹ BC Hydro defines “customer-related costs” as being comprised of:

²³ Commission Order G-40-16.

²⁴ BC Hydro Final Argument, para. 43.

²⁵ Exhibit B-5, BCOAPO 1.65.1.

²⁶ Exhibit B-5, BCOAPO 1.65.1.

²⁷ Transcript Volume 4, pp. 720-721.

²⁸ Exhibit B-5, BCOAPO 1.65.1; BC Hydro Final Argument, para. 55.

²⁹ Exhibit B-5, BCOAPO 1.65.1; BC Hydro Final Argument, para. 56.

- Distribution costs that have been classified as customer-related, that is, metering, services and a portion of transformer costs; and
- Customer care-related costs, that is, billing and call center costs, etc.³⁰

BCOAPO was initially unclear as to how BC Hydro calculated the 45% recovery of customer-related costs. In response to an Undertaking, BC Hydro acknowledged that the percentage should actually be 42% and that the Company's initial calculation included an error in how the Deferral Account Rate Rider (DARR) was treated.³¹ Furthermore, based on the Cost of Service Negotiated Settlement Agreement (COS NSA), the Revenue to Cost ratio for Residential customers is 93.3%.³² Therefore, the 42% recovery is based on rates that only recover 93.9% of costs. If rates were increased to 100% recovery then the percentage of cost recovery would be higher. Since we are comparing revenues to costs (which are 100%) the appropriate metric would be to increase the 42% to what it would be based on full cost recovery which would bring us back to approximately 45% (i.e. $42/0.933$).

As an aside, BCOAPO notes that BC Hydro takes ability to pay into account when deciding on proposed changes to its rate structures. For example, despite that the current RIB rate basic charge recovers 45 per cent of customer-related costs, BC Hydro assessed and ultimately rejected an increase to basic charge recovery of customer-related costs based on customer bill impacts, including to low income customers, stating that "BC Hydro is opposed to increasing the basic charge to recover 100 per cent of customer-related costs due to the very high bill impacts imposed on some customers."³³

BC Hydro Should Not Return to a Flat Residential Rate

BC Hydro notes that after review and modelling of a potential flat residential rate, no stakeholders supported that option.³⁴ BCOAPO reiterates its opposition to BC Hydro reverting to a flat rate, for the following reasons:

- BC Hydro estimates that with a flat rate, in F2017 0.3% of Residential accounts will experience bill decrease of greater than 10% when compared to the proposed RIB rate.³⁵
- BC Hydro estimates that with a flat rate, in F2017 0.2% of low income accounts will experience a bill decrease of greater than 10% when compared to the proposed RIB rate.³⁶ Note this point is key as it demonstrates (per the

³⁰ Exhibit B-5, BCOAPO 1.67.2. In F2008, the residential basic charge recovered approx. 35% of customer-related costs (Exhibit B-5, BCOAPO 1.67.1).

³¹ Commission Order G-47-16, Cost of Service Negotiated Settlement Agreement: http://www.bcuc.com/Documents/Proceedings/2016/DOC_46087_04-11-2016_COS-Negotiated-Settlement-Agreement.pdf.

³² Exhibit B-52, Undertaking #18 (PDF p. 6).

³³ Exhibit B-1, p. 5-41.

³⁴ BC Hydro Final Argument, para. 52; Exhibit B-1, p. 5-22.

³⁵ Exhibit B-5, BCOAPO 1.100.1.

³⁶ Exhibit B-5, BCOAPO 1.100.1.

Residential Inclining Block Rate Review proceeding questions) that there were customers who saw an impact of more than 10% when the RIB rates were implemented, since customers who would experience a 10% bill decrease in moving from the RIB rate to a flat rate design would have experienced the opposite effect (i.e., more than a 10% bill increase) when the Residential rate design was changed from the flat rate to the RIB rate.

- Meanwhile, according to BC Hydro modelling, for low income customers, moving to a flat rate would result in 80% of these customers experiencing increases of more than 10% and 47% of these customers experiencing increases of more than 20%.³⁷
- BC Hydro modelling also shows that under a flat rate most customers will experience bill impacts above the RRA rate increase; further, 70% and 41% of customers would experience bill impacts greater than 10% and 20%, respectively.³⁸
- BC Hydro states that a flat rate would cause bills to go up for most customers, including low income customers, while bills would go down for larger consuming residential customers - only 9% of low income customers would be better off under a flat rate as compared to the RIB rate.³⁹

3.1.2. RIB Rate Review

BC's Minister of Energy and Mines has asked the Commission to report back to the government on five specific questions concerning the impact of BC Hydro and FortisBC RIB rates.⁴⁰ Minister Bennett's letter states that he has heard concerns that the RIB rates may have unreasonable bill impacts on some customers including low income customers and rural customers without access to natural gas. The Minister has asked the Commission to conduct the RIB review in order to look into questions such as the potential for DSM programs to mitigate bill impacts for low income customers without access to natural gas. BCOAPO has already addressed the low income DSM aspect of the RIB Rate Review as part of its September 26, 2016 Final Argument.

BCOAPO made detailed submissions on the RIB Rate Review process in mid-October 2015,⁴¹ focusing on the need for the review to properly consider low income energy efficiency programs, and the fact that low income ratepayers are not financially able to fuel switch, even if they live in areas where natural gas is available. As noted above, BCOAPO does not see any basis to depart from the existing RIB structure, as BC Hydro has pointed out that there is a small but beneficial positive impact of the RIB rate for the majority of low income residential customers. If BC Hydro was to depart from the current

³⁷ Exhibit B-1, p. 5-71.

³⁸ Exhibit B-1, p. 5-23.

³⁹ Exhibit B-1, p. 5-23.

⁴⁰ Exhibit A-1 in BCUC RIB Rate Report proceeding, PDF pp. 4-6.

⁴¹ http://www.bcuc.com/Documents/Arguments/2015/DOC_44885_10-16-2015_BCOAPO_Submission-on-Methodologies.pdf.

RIB structure and move to a flat rate, for example, the majority of low income residential customers would face significant rate increases. However, as discussed already, BCOAPO is proposing programs targeted at low income residential ratepayers in order to mitigate the impacts of future rate increases.

3.1.3. Residential E-Plus Amendment – RS 1105

BC Hydro proposes to amend Special Condition 1 of RS 1105 (known as the “Residential E-Plus” rate) to make it a non-firm, practically interruptible rate, as it was always intended to be.⁴² Specifically, BC Hydro is proposing the following changes to the terms and conditions concerning the Residential E-Plus rate⁴³:

- amend the language in Special Condition 1 of RS 1105 to make it interruptible in a manner that reflects current circumstances;
- issue a new business practice that provides:
 - interruptions will be confined to the October to April period;
 - a seasonal notice each year prior to the October-April period reminding E-Plus customers that interruptions are possible in the coming months;
 - two calendar days’ notice for E-Plus residential customers to switch to their alternative back-up systems. Such an ‘interruption notice’ will be provided at any time during October through April if BC Hydro decides that an E-Plus interruption is warranted in accordance with the proposed terms of RS 1105; and
 - an interruption closure notice when the period of interruption is over.

While BC Hydro’s proposal is intended to make the Residential E-Plus a non-firm, interruptible rate and serve a useful function, BC Hydro notes that the cost to serve E-Plus heating load will continue to be under-recovered.⁴⁴

BCOAPO takes no position on BC Hydro’s Residential E-Plus proposal.

3.2. BC Hydro General Service Rate Proposals

3.2.1. SGS Rate Class – RS 1300/1301/1310/1311 (collectively, RS 13xx)

BC Hydro’s SGS rate class is comprised of General Service customers with billing demand of less than 35 kW.⁴⁵ The current default rate structure for SGS customers consists of a flat energy rate and a basic charge.⁴⁶

⁴² Exhibit B-1, pp. 1-5 to 1-6; pp. 5-48 to 5-56; BC Hydro Final Argument, para. 63.

⁴³ BC Hydro Final Argument, para. 62.

⁴⁴ Exhibit B-1, p. 5-51, Table 5-13. See also, Exhibit B-5, BCOAPO 1.96.1.

BC Hydro proposes to maintain the existing flat energy rate, and is seeking a final order approving a one-time increase to the basic charge to 45% recovery of customer-related costs attributable to the SGS class in the F2016 Cost of Service study (from 33%), and a one-time offsetting reduction of the energy rate to maintain forecast revenue neutrality based on the SGS revenue target calculated using any applicable rate increases arising from the F2017 RRA.⁴⁷

The SGS flat energy rate proposal is dictated by embedded costs (whereas the residential RIB rate is tied to the LRMC).⁴⁸

BC Hydro will define revenue neutrality for F2019 as the target revenue for the SGS rate class as informed by the approved RRA at the time of the F2019 compliance filing.⁴⁹

In its Application, BC Hydro states that “[t]here is no better alternative to the existing SGS rate. It is easy to understand and simple to administer, and generally reflects LRMC in its flat energy structure. The sole issue identified through stakeholder engagement is whether BC Hydro should increase the SGS basic charge recovery of customer-related costs from about 33 per cent to 45 per cent.”⁵⁰

BCOAPO generally supports BC Hydro’s proposal with respect to SGS rates, subject to a few comments below.

Flat Energy Charge

When asked during the stakeholder engagement process whether there is a strong basis to depart from the current SGS flat energy charge given that the SGS energy charge is slightly above the upper end of BC Hydro’s energy LRMC, BCOAPO said the following⁵¹:

- Given that BC Hydro’s rates are expected to increase at more than inflation over the next years it is likely that the SGS energy rate will increase relative to BC Hydro’s energy LRMC.
- However, at the same time, the LRMC benchmark used is just for energy and does not take into account long run marginal costs associated with transmission and distribution required to supply an SGS customer.
- Taking these two factors into account there does not currently appear to be a “strong” basis for departing from the current SGS flat energy charge from an “economic efficiency” perspective. However, the issue should be revisited in

⁴⁵ Exhibit B-1, p. 6-1.

⁴⁶ Exhibit B-1, p. 6-1.

⁴⁷ BC Hydro Final Argument, para. 85.

⁴⁸ Exhibit B-5, BCOAPO 1.63.3.

⁴⁹ Exhibit B-5, BCOAPO 1.140.3.

⁵⁰ Exhibit B-1, p. 6-10.

⁵¹ Exhibit B-1, Appendix C-4A, Attachment 2, p. 259 (PDF p. 3147).

future if the value for the flat energy rate materially exceeds LRMC of energy. In such an event, it would be useful to also look at the transmission and distribution LRMC for SGS customers before drawing any conclusions about the appropriateness of the current rate design.

BCOAPO reiterates those comments here.

Increase in Basic Charge (to 45% cost recovery)

BCOAPO was initially unclear about the derivation of 33% figure for customer costs recovery through the SGS basic charge. During cross-examination, BCOAPO questioned BC Hydro about why the number of SGS accounts used in BCOAPO 1.137.2⁵² does not match the number of accounts in the COS model (Tab 5.3)⁵³ or the number of accounts reported in BCOAPO 1.139.1. BC Hydro acknowledged that there is a difference and attributes it to a difference in timing as to when the calculations were made.⁵⁴ With that said, BCOAPO submits that if BC Hydro is calculating a percentage, the number of customers used in both the numerator and denominator of the calculation should be the same. However, BC Hydro confirmed that the fixed cost recovery is still 33% based on the COS methodology contained in the COS NSA, as the total customer costs did not change.⁵⁵

The derivation of the basic charge cost recovery uses the current rates which (based on the COS study) over recover costs by 12%.⁵⁶ If total revenues were set equal to the total cost then the 33% value would decrease to 29.5% (33/1.119) – the resulting increase in the basic charge to align with the 45% value for Residential would be higher, and the energy rate would be reduced slightly – bringing it more in line with the current LRMC.

3.2.2. MGS Rate Class – RS 1500/1501/1510/1511 (collectively, RS 15xx)

BC Hydro's Medium General Service (MGS) rate consists of General Service customers whose billing demand is equal to or greater than 35 kW but less than 150 kW, and whose energy consumption in any 12-month consecutive period is equal to or less than 550,000 kWh.⁵⁷ The current default rate structure for MGS is complex, and includes a two-part energy rate, a three-step inclining block demand charge, a basic charge, and a minimum monthly charge.⁵⁸

BC Hydro proposes the following modifications to the MGS rate structure:⁵⁹

⁵² Exhibit B-26.

⁵³ Exhibit B-1, Appendix C.

⁵⁴ Transcript Volume 4, p. 762.

⁵⁵ Transcript Volume 4, p. 780.

⁵⁶ Commission Order G-47-16, Appendix A, p. 35.

⁵⁷ BC Hydro Final Argument, para. 94.

⁵⁸ BC Hydro Final Argument, para. 94.

⁵⁹ BC Hydro Final Argument, para. 95.

- Replace the existing MGS two-part energy rate with a flat energy rate;
- Replace the existing MGS three-step inclining block demand charge with a flat demand charge; and
- Increase the demand charge recovery of demand-related costs from approximately 15 per cent to 35 per cent to better align charges with cost causation.

BCOAPO is generally supportive of BC Hydro's proposal to flatten and simplify the MGS rate, subject to the following comments.

The derivation of the demand charge cost recovery uses the current rates which (based on the COS study) over recover costs by 17.2%.⁶⁰ If revenues equaled allocated costs then the current recovery percentage would only be 12.8% and the increase on the demand charge would need to be greater to achieve the 35% (or 30% based on the NSP Cost of Service results). However, this would further decrease the flat energy rate (currently expected to be 8.54 cent in F2017 per page 6-24) – thereby moving it further away from the LRMC⁶¹ and exacerbating the impacts on low load factor customers. BCOAPO therefore suggests that BC Hydro maintain the current demand charge proposal and acknowledge that recovery will effectively be less than 35%.

The COS NSA will change the planned demand cost recovery from 35% to 30%.⁶²

BCOAPO generally supports BC Hydro's proposal regarding the demand energy charges, recognizing that the proposal will yield a demand charge cost recovery of less than 30% when taking into account both the NSP agreement (which reduces the recovery to 30%) and the fact the rates are currently over recovering costs. BC Hydro's proposal reasonably balances bill impacts, efficiency regarding the LRMC, and improved cost reflectivity.

3.2.3. LGS Rate Class – RS 1600/1601/1610/1611 (collectively, RS 16xx)

The Large General Service (LGS) rate class consists of General Service customers whose billing demand is equal to or greater than 150 kW or whose energy consumption in any 12 month consecutive period is greater than 550,000 kWh.⁶³ As with the MGS rate, BC Hydro currently has a complicated rate structure for its LGS customers, consisting of a two-part energy rate, a three-step inclining block demand charge, a basic charge, and a monthly minimum charge.⁶⁴

⁶⁰ Commission Order G-47-16, Appendix A, p. 35.

⁶¹ Exhibit B-23, BCUC 2.137.1.

⁶² Exhibit B-52, Undertaking 22.

⁶³ BC Hydro Final Argument, para. 113.

⁶⁴ BC Hydro Final Argument, para. 113.

Similar to its proposal for MGS rates, BC Hydro proposes the following modifications to the LGS rate structure⁶⁵:

- Replace the existing LGS two-part energy rate with a flat energy rate;
- Replace the existing LGS three-step inclining block demand charge with a flat demand charge; and
- Increase the demand charge recovery of demand-related costs from approximately 50% to 65% to better align charges with cost causation.

BCOAPO is generally supportive of BC Hydro's proposal to flatten and simplify the LGS rate, subject to a few comments below.

Demand charge cost recovery (increase from 50% to 65%)

The COS NSA will change the demand cost recovery percentage from 65% to 66%.⁶⁶ However, in the case of LGS customers, the revenue to cost ratio is 101.3% so there is no material distortion in comparing demand revenues and demand costs.⁶⁷

According to a response to an undertaking provided by BC Hydro⁶⁸, the demand cost recovery for Transmission customers is now at 59% as a result of the COS NSA – not 65%. As such, the question arises as to whether the target here should be reset at 59%. This would provide for consistency between the two classes and increase the flat energy rate marginally (5.37cents for F2017 per Exhibit B-1 at page 6-50 which is now well below LRMC). However, the increase would not be material, as maintaining the current 50% demand cost recovery does not provide much of an improvement (increase energy rate to 5.98 cents per Exhibit B-1 at page 6-50). We also note BC Hydro's commitment to look at options for this class and in particular the larger "XLGS" customers.⁶⁹ However, as BCOAPO is unclear as to what the bill impacts for LGS customers would be of adopting a demand cost recovery factor of 59%, it is not in a position to make a recommendation as this time. BCOAPO requests that BC Hydro address this matter in its October 24, 2016 reply argument.

MGS and LGS Demand Ratchets

Both MGS and LGS customers have ratchets in their demand charges (also called a "minimum charge")⁷⁰ which BC Hydro proposes to maintain.⁷¹ In cross-examination, counsel for the Commercial Energy Consumers tested the appropriateness of these ratchets.⁷² BCOAPO supports BC Hydro's proposal to maintain the 50% demand

⁶⁵ BC Hydro Final Argument, para. 114.

⁶⁶ Exhibit B-52, BC Hydro Undertaking #20 (PDF p. 8).

⁶⁷ Commission Order G-47-16, Appendix A, page 35.

⁶⁸ Exhibit B-52, BC Hydro Undertaking #19 (PDF p. 7).

⁶⁹ Transcript Volume 5, p. 975.

⁷⁰ Exhibit B-1, p. 6-31.

⁷¹ Exhibit B-1, p. 6-32.

⁷² Transcript Volume 5, p. 854.

ratchets for LGS and MGS customers, noting that these ratchets ensure fair cost recovery from customers whose billing demands are materially lower in the non-winter months.

3.2.4. MGS and LGS: Three Related Requests

BCOAPO does not oppose the three related orders BC Hydro seeks if its MGS and LGS rate proposals are approved, namely⁷³:

- Elimination of TS 82;
- Amendment to RS 1200/1201/1210/1211 to enable dissolution of the LGS and MGS control groups; and
- Elimination of RS 2600/2601/2610/2611.

3.3. BC Hydro Transmission Service Rate Proposals

3.3.1. Rate Schedule 1823 (Default Two-Step Rate)

RS 1823 is the default two-step rate for Transmission Service customers, and was implemented on April 1, 2006 following a Negotiated Settlement Agreement.⁷⁴ It consists of the following pricing elements: Tier 1 energy rate, Tier 2 energy rate, demand charge, the flat energy rate A, and the minimum monthly charge.⁷⁵

Subsection 3(1) of Direction No. 7 restricts the Commission's jurisdiction concerning core rate design elements of RS 1823, including the Tier 1/Tier 2 90/10 split. Accordingly, BC Hydro's proposals in this Application focus on the three RS 1823 elements over which the Commission has jurisdiction: pricing principles for F2017 to F2019; the definition of revenue neutrality; and the demand charge.

Under RS 1823, a Customer Baseline (CBL) is initially determined for each specific customer site to represent the customer's normal historic annual energy consumption. The CBL is then subject to revision annually, and at other times in accordance with TS 74.

Under Energy Rate B of RS 1823, a customer purchases annual energy volumes at the Tier 1 rate up to 90 per cent of its CBL and at the Tier 2 rate above 90 per cent of CBL (as noted in section 2.2.1.3 of the 2015 RDA, this is referred to as the Tier 1/Tier 2 90/10 split). RS 1823 was designed to be "customer bill neutral" when annual energy consumption is equal to 100 per cent of a customer's CBL. That is, a customer whose annual consumption equals 100 per cent of its CBL will pay an average energy rate equal to the RS 1823 flat Energy Rate A for new accounts or for customers that, from

⁷³ BC Hydro Final Argument, para. 134.

⁷⁴ Commission Order G-79-05.

⁷⁵ BC Hydro Final Argument, para. 137.

time to time, do not have a CBL in accordance with TS 74. The Tier 2 rate is set as a signal of BC Hydro's energy LRMC.

RS 1823 has a monthly minimum charge/demand ratchet. The demand ratchet ensures that some portion of fixed costs is recovered from customers even though they do not impose a significant demand on the system in a particular month. The principle is that the system is built to meet their loads and the utility can recover some portion of fixed costs even in the event that the customer has little demand in a particular month. Most surveyed Canadian electric utilities employ demand ratchets for their large industrial customers.

BC Hydro's view is that RS 1823 is generally working well, and there are no changes required to the rate.⁷⁶ BC Hydro is proposing the following in the present Application:

- approval of the RS 1823 F2017-F2019 Pricing Principles (labelled Option 1 in section 7.2.2.2 of the Application) pursuant to which (in F2017) Tier 2 is set to the lower end of the energy LRMC range and Tier 1 is set so that customer bill neutrality results, and thereafter (F2018/F2019) RRA increases are applied equally to both Tier 1 and Tier 2;
- no changes to the demand charge;
- no changes to the current minimum monthly charge/demand ratchet; and
- continuation of the current RS 1823 definition of Billing Demand for purposes of determining the demand charge, which is the higher of:
 1. Highest kV.A demand during HLH in the billing period;
 2. 75 per cent of the highest Billing Demand during the immediately preceding period of November to February; or
 3. 50 per cent of Contract Demand in the customer's Electricity Supply Agreement.

BCOAPO notes that the majority of stakeholders – and particularly those customers affected by this rate (Association of Major Power Customers (AMPC) and the Canadian Association of Petroleum Producers (CAPP)) – support BC Hydro's proposals for RS 1823.⁷⁷

BCOAPO initially supported a different option (Option #2, which is BC Hydro's existing practice), where the general rate increase is applied to the blended rate and the Tier 1 rate is calculated residually holding the Tier 2 rate constant at the LRMC and using the 90/10 split. This was due to concerns about under recovery with BC Hydro's proposed method.

⁷⁶ Exhibit B-1, p. 7-2.

⁷⁷ Exhibit B-1, p. 7-11.

BCOAPO does not oppose BC Hydro's proposal for RS 1823, subject to the following comments.

Revenue Neutrality

BCOAPO is of the view that the definition of revenue neutrality should be revisited. The current definition of revenue neutrality based on bill neutrality at consumption equal to CBL is problematic. During the stakeholder engagement process, BCOAPO said that "if forecast customer use for purposes of rate-setting less than its CBL, there is no true revenue neutrality and other customers classes [e.g. residential] will pay to make up for the shortfall in revenue."⁷⁸ BCOAPO is also of the view that defining revenue neutrality according to the forecast revenue neutrality approach applied to other rate classes ensures consistency.

BC Hydro states that "the definition of revenue neutrality used for RS 1823 customers in F2017 does not affect the level of the overall RRA increase in each of F2018 and F2019. The RRA increases in F2018 and F2019 are only determined once and do not account for any revenue shortfall in F2017 due to the use of bill neutrality in determining F2017 rates"⁷⁹

According to BC Hydro, the revenue under recovery that results from using customer bill neutrality is \$0.4 M - \$0.5 M per year – materially less than the values of \$2 M plus set out in the original Application at Exhibit B-1, Appendix C-5A, page 17.⁸⁰

BC Hydro's rationale for using customer bill neutrality appears to be three-fold: i) it allows the current T1/T2 differential to be maintained, ii) use of forecast revenue neutrality unfairly impacts TSR customers that have conserved energy and iii) it aligns with Policy Action No. 21.⁸¹

In principle, BCOAPO prefers forecast revenue neutrality as it aligns with the revenue neutrality definition used for all other classes. However, given the minor difference in revenues (which are lower than initially suggested), BCOAPO accepts the customer bill neutrality definition.

BCOAPO notes as an aside, however, that the under-recovery estimated to be \$0.4-0.5M per year is very close to BC Hydro's own estimate of \$550,000 for ongoing annual administrative costs for BCOAPO's proposed ESUB rate.⁸²

Demand Charge Level

BCOAPO raises a point of clarification concerning reconciliation of demand revenues used to calculate demand-related cost recovery.⁸³ BCOAPO notes that the COS

⁷⁸ Exhibit B-1, Appendix C-5A, p. 87.

⁷⁹ Exhibit B-5, BCOAPO 1.159.4.

⁸⁰ Exhibit B-5, BCOAPO 1.160.4.

⁸¹ Exhibit B-1, p. 7-14.

⁸² Exhibit B-31, BC Hydro Rebuttal Evidence, p. 5.

⁸³ Exhibit B-1, p. 7-16.

methodology as set out in the COS NSA will change demand-related costs attributable to Transmission customers,⁸⁴ and BC Hydro confirmed that using the COS NSA methodology, the revised per cent of demand cost recovery is approximately 59% instead of 65% used in the Application.⁸⁵ BCOAPO is not recommending any change to the current RS1823 demand cost recovery level of 59% but notes that, as discussed above, this changes the demand cost recovery factor that would be required for the LGS rate class if the demand cost recovery for the two classes was to be aligned.

3.3.2. Rate Schedule 1825 (Time of Use Rate for Transmission Customers)

RS 1825 is BC Hydro's Time of Use (TOU) Rate for Transmission customers. BC Hydro is not proposing any change to this rate.

BC Hydro notes the following about RS 1825⁸⁶:

the intent of RS 1825 is to shift the winter load from high load hours to low load hours, and to shift load from winter months to all other months of the year. The RS 1825 design overlays four TOU pricing periods onto the RS 1823 structure, which are designed to encourage consumption pattern changes on winter days and between the winter months and remainder months.

Each TOU pricing period requires a unique CBL. In each pricing period, RS 1825 customers pay a Tier 1 rate for the first 90% of period energy consumption relative to their CBL and a Tier 2 rate for any energy in excess of 90 per cent of their CBL. No customer has ever taken service under this rate. During the stakeholder engagement process, BCOAPO suggested that one of the key reasons why no customers have ever taken service under RS 1825 is that conservation under RS 1823 is more economically attractive and therefore there is more customer support for load curtailment than TOU rates.⁸⁷

At the same time, any reconfiguration to make RS 1825 more attractive to customers (e.g. increase differentials across periods) should be consistent with system requirements and costs by period.

BC Hydro is not proposing to make any changes to RS 1825 at this time and no stakeholder supported BC Hydro pursuing a reconfigured RS 1825. AMPC favoured BC Hydro focusing on the freshet rate pilot and load curtailment pilot⁸⁸; Transmission customers essentially said TOU rates would not work for their business because they operate continuous manufacturing process that does not support load shifting.⁸⁹

⁸⁴ Transcript Volume 4, p. 759, lines 17-26; p. 760, lines 1-6.

⁸⁵ Exhibit B-52, BC Hydro Undertaking #19.

⁸⁶ Exhibit B-1, p. 7-16.

⁸⁷ Exhibit B-1, Appendix C-5A, p. 104.

⁸⁸ Exhibit B-1, p. 7-20.

⁸⁹ Exhibit B-1, p. 7-20.

There appears to be no customer interest and no cost justification for pursuing revisions to this option that would encourage load shifting. As such, BCOAPO supports maintaining the status quo for RS 1825.

3.3.3. Rate Schedule 1880 (Standby and maintenance supply)

RS 1880 was implemented prior to 1991 and is available to Transmission Service customers with self-generation for replacement of energy due to curtailment of the customer's on-site generation.⁹⁰ RS 1880 includes the following features⁹¹:

- Energy is provided on an 'as available' basis at the RS 1823 Tier 2 price. BC Hydro proposed a RS 1880 energy charge based on the Mid-C hourly index as part of the 2005 TSR Application. In the subsequent 2005 TSR Outstanding Matters Application, BC Hydro stated that "some stakeholders are concerned about the potential volatility of the Mid-C prices, particularly given the inability to control the timing of forced outages and on-site generation". Consequently, BC Hydro proposed that the RS 1880 energy charge should be the same as the Tier 2 price. The Commission approved BC Hydro's RS 1880 proposal in Order No. G-19-06.
- There is no demand charge associated with RS 1880 because the service is non-firm.
- There is an administrative charge of \$150 per incident (period of use) to recover the incremental costs incurred by BC Hydro resulting from a customer's request for service under RS 1880. This charge has been unchanged since it came into effect in early 2006.

BC Hydro can terminate the supply of RS 1880 if it does not have sufficient generation or transmission capacity; the special condition under the tariff is not limited to generation capacity.⁹²

BC Hydro states that the rate is generally working well, and that no changes are required.⁹³

For RS 1823 customers taking non-firm service under RS 1880, BC Hydro retains the right to curtail the customer's incremental load if it is unable to supply the incremental energy or capacity.⁹⁴

BC Hydro states the following with respect to RS 1880:

⁹⁰ Exhibit B-1, p. 7-45.

⁹¹ Exhibit B-1, p. 7-45.

⁹² BC Hydro response to BCOAPO 1.173.1.

⁹³ Exhibit B-1, p. 7-2.

⁹⁴ Exhibit B-5, BCOAPO 1.169.1.1.

“No concerns have been expressed by Transmission Service customers who use the rate. The ‘as available’ non-firm energy supplied at the RS 1823 Tier price is likely above cost. However, as noted in section 4.2 of the Workshop 10 consideration memo, basing the RS 1880 energy rate on the RS 1823 Tier 2 rather than lower spot market prices helps ensure that any additional incremental costs are recovered from customers using the non-firm services. While the RS 1880 administrative charge is reasonable, and while labour costs associated with administering RS 1880 (e.g., manual billing adjustments for RS 1880 requests) are minor, it is difficult to say with certainty whether the administrative charge under or over recovers actual labour costs.”⁹⁵

BCOAPO sees no reason to alter the RS 1880 at this time.

3.4. BC Hydro Electric Tariff Terms and Conditions Proposals

3.4.1. Standard Charge Pricing Principles

Although BC Hydro did not initially outline its policy/principles as to when a separate standard charge will be levied as opposed to assuming that the associated activity is part of the overall cost of providing service and covered by the standard rates charged to each class, BC Hydro witness Gordon Doyle addressed this issue at the Oral Hearing⁹⁶:

MR. DOYLE: A: So, I'm not sure about a policy per se, but if I -- when we look at -- I think what we look at is, you know, if you have an identifiable service and the costs are clearly identifiable to providing that service, it seems to make sense that, you know, where we can, we propose these sort of standard charges. But, you know, many of these are sort of one-time, one-offs or, you know, not reoccurring charges such as the taking of electricity at your home, where you take it on a, I guess, minute-by minute type basis.

Also, nowhere does BC Hydro set out its pricing principles for Standard Charges.

Overall, BCOAPO submits that the driver behind charging a specific service charge should not be simply that the activity/service's costs can be clearly identified (which could apply to required services such as billing) but rather that it is a service/activity that is not typically required as part of BC Hydro meeting its ongoing obligation to serve.

3.4.2. Proposed Future Review Process

For future review of Standard Charges between Rate Design Applications, BC Hydro proposes that it do the following⁹⁷:

- update the quantum of charges through the RRA process; and

⁹⁵ Exhibit B-1, p. 7-46.

⁹⁶ Transcript Volume 3, p. 464.

⁹⁷ Exhibit B-1, p. 8-4.

- use Rate Design Applications for more substantial, structural changes to standard charges, to introduce new charges, and to make major changes to terms and conditions of service.

BCOAPO supports BC Hydro's proposal. More regular reviews will allow for a more frequent review of standard charges and terms and conditions of service.

3.4.3. Security Deposits

BC Hydro is proposing changes to the **conditions** under which it can request a security deposit, and the **amount** that it assesses⁹⁸:

- Conditions: BC Hydro proposes that the Tariff allow the application of a new security deposit or increase in an existing deposit if actual consumption is found to be significantly higher than the consumption that was estimated when the account was created
- Amount: Change the language of the tariff provisions to enable security deposits "up to" two or three times the average monthly bill.
 - Collection processes can be modified to enable a progressive increase in the SD applied in situations warranted by the level of risk the customer poses – this helps to reduce the financial hardship that sometimes results from a large SD requirement
 - Option of applying SD for standardized amounts (e.g. \$50 for an apartment), which is simpler for customers to understand and easier to administer
 - Security deposits will be waived for low income customers whose payments are being made by MSDSI (e.g., Direct, about 6,000 customers)⁹⁹

As BC Hydro notes, most other Canadian jurisdictions have more flexibility than BC Hydro currently does in determining the amount of a security deposit.¹⁰⁰ BCOAPO supports the added flexibility of changing the Tariff wording to "up to 2x/3x the average monthly bill".

BCOAPO initially had some concerns regarding BC Hydro's proposal for setting standardized security deposits for apartments, as a \$50 security deposit may be reasonable for a median apartment, but for usage at the lower end (i.e. 20% percentile or less) it is likely too high. BCOAPO sought clarification regarding this proposal during cross-examination. BC Hydro acknowledged that the wording in the Application could

⁹⁸ Exhibit B-1, p. 8-19.

⁹⁹ Exhibit B-26-1, BCOAPO 1.192.1, REVISED Attachment 1, p. 40.

¹⁰⁰ BC Hydro Final Argument, para. 169.

be misleading,¹⁰¹ and clarified that BC Hydro was not applying for a standardized \$50 for apartment dwellers if 2-3x the customer's monthly bill is less than \$50.¹⁰² Further, for low use customers whose bi-monthly bill is less than \$50, BC Hydro clarified that it will not request a security deposit at all.¹⁰³ BC Hydro confirmed this clarification in its Final Argument.¹⁰⁴ With that clarification, BCOAPO's concerns regarding the standardized security deposits for apartments have been addressed.

As noted in our September 26, 2016 Final Argument, BCOAPO is requesting that security deposits be waived for low income customers. Subject to that request, BCOAPO supports BC Hydro's proposals regarding security deposits.

3.4.4. Other Proposed Standard Charges

BCOAPO provides comments below on several of BC Hydro's proposed standard charges. Although BC Hydro states in its Final Argument that "most of its proposals regarding Standard Charges received little attention from interveners beyond clarification questions,"¹⁰⁵ BCOAPO submits that it is important that each proposal is carefully reviewed by the Commission – what may appear to some to be a modest charge can be significant to some ratepayers, and each standard charge must be fair and reasonable.

3.4.4.1. Minimum Connection Charge

BC Hydro is proposing significant increases to many of its connection charges.¹⁰⁶ BC Hydro states that current charges were based on F2006,¹⁰⁷ and the proposed charges reflect F2016 costs (average costs based on the customer's service requirements).

The 2007 costing did not include direct and indirect overheads related to the standard labour charges – which are now included.¹⁰⁸

As noted by BC Hydro witness Gordon Doyle¹⁰⁹, these overheads are either included in the standard rates, or charged out in the specific service charges:

MR. DOYLE: A: So, I mean, when we're looking at this, I think it's -- you know, when we're looking at the asset charges, there's sort of two ways we can collect those overheads. We could directly assign a portion of those direct overheads to the charge -- to the actual charge for the work being done. Or we could collect those through the general revenue through rates. So we're going to collect those overheads either through rates or through assigning them directly to these costs.

¹⁰¹ Transcript Volume 6, p. 1094.

¹⁰² Transcript Volume 6, p. 1095.

¹⁰³ Transcript Volume 6, p. 1095.

¹⁰⁴ BC Hydro Final Argument, para. 170.

¹⁰⁵ BC Hydro Final Argument, para. 162.

¹⁰⁶ Exhibit B-1, p.8-6 to 8-7, Table 2.

¹⁰⁷ Exhibit B-1, p. 8-5.

¹⁰⁸ Exhibit B-23, BCUC 2.159.1.

¹⁰⁹ Transcript Volume 6, p. 1079.

In this case, we thought it was -- you know, in reviewing them, it was more appropriate to apply a portion of them to the actual costs rather than recovering them all in rates, because we could identify those factors.

In BCOAPO's view, the latter approach seems more appropriate as long as this practice is being applied consistently to all specific charges and in other situations where overheads could be applied (e.g., capitalized costs related to assets under construction). Otherwise, the connection charges should continue to be based on directly assignable costs.

BCOAPO is unclear whether the 2007 allowance for Overhead Loadings (i.e. Designer Work) included or excluded direct/indirect overheads related to Designer hours¹¹⁰; however, as above, BCOAPO submits that the approach must be consistently applied. As part of its reply argument, BC Hydro may wish to address this consistency issue.

BCOAPO supports use of the Power Line Technician rate for meter installation charges.¹¹¹ The reasonableness of the cost calculations was discussed at the oral hearing, where, BC Hydro noted that using a higher PLT rate when a (lower costs) meter technician might do the job is offset by assumptions regarding a lower travel time requirement.¹¹² On balance, BC Hydro's proposal seems reasonable.

3.4.4.2. Reconnection Charges

BC Hydro is seeking approval of updated Reconnection Charges, which are applied when a premises is reconnected after being disconnected for a variety of reasons. BC Hydro's proposed updated Reconnection Charges are set out in Table 8-3 of the Application.

These proposals were reviewed on an expedited basis, and BCOAPO's submissions specifically supporting the reduction of the Minimum Reconnection Charge from \$125 to \$30 can be found at Exhibits C2-2 and C2-3. The main purpose of the Minimum Reconnection Charge is to reconnect customers following disconnection for non-payment of balances in arrears or for vacant accounts.¹¹³

On November 3, 2015, the Commission ordered BC Hydro to update all of the proposed charges on an interim basis effective December 1, 2015. Specifically, the Commission ordered BC Hydro to do the following:

- Set the Minimum Reconnection Charge at the proposed rate of \$30/meter;
- Set the manual reconnection performed on overtime at \$280/meter;

¹¹⁰ Exhibit B-5, BCUC 1.122.1.

¹¹¹ Exhibit B-23, BCOAPO 2.289.

¹¹² Transcript Volume 6, p. 1081.

¹¹³ BC Hydro Final Argument, Appendix A, para. 15.

- Set the manual reconnection at the point of connection because of refused access to the meter be set at \$700/meter; and
- Remove the charge for a manual reconnection requiring a call out.¹¹⁴

For the reasons outlined in Exhibits C2-2 and C2-3, BCOAPO supports making the \$30 Minimum Reconnection Charge permanent. In BCOAPO's view, however, since BC Hydro has been able to manually reconnect the majority of residential customers for several years, BC Hydro should have applied much earlier to reduce this charge. BC Hydro testified that it did not immediately apply to the Commission to reduce the reconnection fee as it was grappling with the finer points of cost allocation.¹¹⁵

BC Hydro proposes to update the overtime reconnection charge from \$158 to \$280 to recover increased costs associated with a manual reconnection done on overtime hours. After-hour reconnections at call-out rates are extremely rare, and so BC Hydro proposes that the Call-Out charge be removed; any reconnections requiring call-outs would be charged at the overtime rate of \$280 per meter.¹¹⁶ BC Hydro's proposed updated charge appears to be cost-based.

BC Hydro is also proposing a standard charge of \$700 for manual reconnections at the point of connection where the customer refuses access to the meter.¹¹⁷ In cases where this charge is applied following disconnection for non-payment, BC Hydro clarified at the oral hearing that this charge would only apply after BC Hydro makes repeated attempts to disconnect and to communicate with the customer, and the disconnection and reconnection had to be done manually by a power line technician at the pole or the underground connection point because the customer refused access (e.g. by barricading the meter).¹¹⁸ While BC Hydro's proposed updated charge appears to be cost-based, BCOAPO is not taking a position on the \$700 charge.

3.4.4.3. Minimum Charges

BCOAPO had concerns regarding the proposed wording change for Section 2.10 of the Electric Tariff. BC Hydro has confirmed that "minimum charge" is not a defined term in the proposed Terms and Conditions,¹¹⁹ and has not suggested a definition.

While it was not initially clear what the minimum charges referred to in Section 2.10 are and/or how they would be calculated, BC Hydro witness Gordon Doyle clarified this during cross-examination.¹²⁰ BC Hydro also addressed this issue in its Final Argument, stating that "[a]s drafted, the proposed wording change for Section 2.10 of the Electric Tariff contemplates payment of all 3 of the enumerated charges, while in fact, payment

¹¹⁴ Commission Order G-175-15.

¹¹⁵ Transcript Volume 3, pp.475-476.

¹¹⁶ Exhibit B-1, p. 8-10.

¹¹⁷ Exhibit B-1, p. 8-8.

¹¹⁸ Transcript Volume 6, p. 1139-1141.

¹¹⁹ Exhibit B-23, BCOAPO 2.293.1.

¹²⁰ Transcript Volume 6, p. 1021.

of re-application of service is intended to be the sum of the (1) greater of the minimum reconnection charge or BC Hydro's estimated cost to restore service and (2) the minimum charges the customer would have paid between the time of termination and the time that service is restored."¹²¹ We therefore support the modification of the wording change for Section 2.10 of the Electric Tariff that BC Hydro has proposed in its Final Argument.¹²²

3.4.4.4. Late Payment Charge

BC Hydro is proposing to continue its current 1.5% Late Payment Charge on the basis that it recovers BC Hydro's costs.¹²³ The Commission approved continued application of the 1.5% Late Payment Charge in the 2007 RDA.¹²⁴

BC Hydro states that the Late Payment Charge is foremost a cost recovery mechanism to compensate BC Hydro for expenses incurred as a result of the late payment and to take into account the time value of money, and also a means to induce prompt payments on the part of customers.¹²⁵

BC Hydro is not proposing to change its current \$30 threshold for application of the Late Payment Charge.¹²⁶

BC Hydro currently suspends Late Payment Charges on a prospective basis for customers who have active installment payment plans.¹²⁷

BCOAPO made comprehensive submissions about the Late Payment Charge in our September 26, 2016 Final Argument. As noted in those submissions, BCOAPO is requesting that low income customers be exempt from Late Payment Charges¹²⁸ based, among other things, on BC Hydro's own acknowledgement that "if a customer does not have the ability to pay, conceptually, it makes sense that credit and collection response that further increase a customer's bill may not be productive."¹²⁹

In our September 26, 2016 Final Argument, BCOAPO also recommended changes to the Late Payment Charge that would apply to all residential customers, including delayed application of the charge (i.e. to Day 60 after the due date)¹³⁰ and reducing the

¹²¹ BC Hydro Final Argument, para. 175-176.

¹²² BC Hydro Final Argument, para. 176.

¹²³ BC Hydro Final Argument, para. 162.

¹²⁴ Commission Reasons for Decision in BC Hydro 2007 Rate Design Application – Phase I, p.200: http://www.bcuc.com/Documents/Proceedings/2007/DOC_17004_10-26_BCHydro-Rate-Design-Phase-1-Decision.pdf.

¹²⁵ Exhibit B-1, p. 8-13.

¹²⁶ Exhibit B-1, p. 8-12.

¹²⁷ Exhibit B-26-1, BCOAPO 1.192.1 REVISED Attachment 1, p. 54.

¹²⁸ BCOAPO Final Argument on BCOAPO Proposals, p. 79-82.

¹²⁹ BCOAPO Final Argument on BCOAPO Proposals, p. 79; Exhibit B-26-1, BCOAPO 1.192.1, REVISED Attachment 1 (second revision, July 2016), at p. 32.

¹³⁰ BCOAPO Final Argument on BCOAPO Proposals, pp. 82-84.

Late Payment Charge for all residential customers to the short-term cost of debt.¹³¹ While BC Hydro argues that its Late Payment Charge is in line with the other Canadian electric utilities it surveyed,¹³² BCOAPO submits that it is far more important that the charge be justified based on identifiable costs, which we have argued is not the case.¹³³ BC Hydro's Late Payment Charge fails to meet either of the two regulatory justifications that BC Hydro advances for it. The Late Payment Charge is not cost-based, nor does it serve as an effective incentive for residential customers to make payments and thus reduce either bad debt or arrears.¹³⁴ Moreover, as BCOAPO has documented, the Late Payment Charge fails the "matching" principle, which requires that the charges imposed be matched, in both time and causation, to the people paying those charges.¹³⁵

3.4.4.5. Returned Payment Charge

BC Hydro is proposing to continue the Returned Payment Charge (formerly called the Returned Cheque Charge) at the lower rate of \$6 rather than the current rate of \$20 to reflect current costs (e.g. most payment are made electronically now).¹³⁶

BCOAPO supports BC Hydro's proposal to reduce the returned payment charge; we have no issues with the proposed \$6 standard charge or basis for its calculation.

3.4.4.6. Account Charge

BC Hydro proposes to continue with an Account Charge of \$12.40.¹³⁷

The Account Charge is applied when a customer submits an application for a new account or an existing customer moves an account, regardless of whether it is done online or via a customer service agent.

BCOAPO has objected to this account charge, arguing that it leaves BC Hydro worse off financially than had it not assessed the charge in the first instance.¹³⁸ Moreover, BCOAPO has documented how the account charge lacks a cost-basis. As BCOAPO clearly demonstrated,

BC Hydro has not documented that the costs associated with reconnecting service (or establishing service) would be avoided in the absence of the tasks of reconnecting (or establishing) service. In the absence of such documentation, the

¹³¹ BCOAPO Final Argument on BCOAPO Proposals, p. 84.

¹³² BC Hydro Final Argument, para. 162.

¹³³ BCOAPO Final Argument on BCOAPO Proposals, p. 81.

¹³⁴ BCOAPO Final Argument on BCOAPO Proposals, p. 81.

¹³⁵ BCOAPO Final Argument on BCOAPO Proposals, pp. 83-84.

¹³⁶ BC Hydro Final Argument, para. 162.

¹³⁷ Exhibit B-1, p. 8-15.

¹³⁸ BCOAPO Final Argument on BCOAPO Proposals, p. 91.

costs would be incurred irrespective of whether a certain number of service reconnections (or establishments) arise.”¹³⁹

If the costs do not vary up or down based on the number of account changes which trigger imposition of the charge, the charge is not cost-based.

BC Hydro’s own witness acknowledged the demonstration that needs to be made to justify a stand-alone charge. According to BC Hydro witnesses: “if you have an identifiable service and the costs are clearly identifiable to providing that service, it seems to make sense that, you know, where we can, we propose these sort of standard charges.”¹⁴⁰ With the account charges, the costs are not “clearly identifiable,” nor is the service “clearly identifiable.” Instead, BC Hydro incurs expenses for a certain level of “customer service.” If resources are not devoted to the tasks associated paid by the account charge, they are devoted to something else. In other words, they are incurred irrespective of the number of account changes, if any, that are undertaken. The costs do not increase if account changes increase and they do not decrease if account changes decrease. There is simply no causal relationship. As noted in our September 26, 2016 Final Argument, BCOAPO is requesting that the Account Charge be waived for low income customers.¹⁴¹

3.4.4.7. Proposed Meter Test Charge

BC Hydro is proposing a new Meter Test Charge of \$181.¹⁴² The proposed charge is based on the updated First Meter (Minimum Connection Charge) as a proxy – formerly, the Meter Test Charge was based on the Minimum Reconnection Charge; however with the reduction in the MRC from \$125 to \$30, BC Hydro states it no longer serves as a useful proxy to reflect cost recovery.¹⁴³

BCOAPO clarified during cross-examination that the charge is only applied after the fact if the meter is found to be accurate; that is, customers are not charged the Meter Test Charge upfront.¹⁴⁴

BCOAPO views the \$181 charge as reasonable, but agrees with concerns expressed by MoveUp (formerly COPE 378) that a large Meter Test Charge may result in some customers with legitimate concerns foregoing their right to have the meter tested out of concern they would be charged if the meter passes.¹⁴⁵

With that said, BC Hydro’s information suggests it is being asked to do less than 165 meter tests each year.¹⁴⁶ Given the *de minimis* nature, BCOAPO is not opposed to the

¹³⁹ BCOAPO Response to BC Hydro IR 1.23.1.

¹⁴⁰ Transcript Volume 3, p. 464, lines 1-3.

¹⁴¹ BCOAPO Final Argument on BCOAPO Proposals, p. 90-92.

¹⁴² BC Hydro Final Argument, para. 162.

¹⁴³ BC Hydro Final Argument, para. 162; Transcript Volume 6, p. 1083.

¹⁴⁴ Transcript Volume 6, p. 1085.

¹⁴⁵ Exhibit B-1, p. 8-17.

¹⁴⁶ Exhibit B-1, Appendix C-3B, Attachment 2, p 449.

\$181 Meter Test Charge, but submits that BC Hydro should be able to waive the fee if there was a prima facie case for believing the meter was faulty.

3.4.4.8. Collection Charge

BC Hydro proposes elimination of the collection charge.¹⁴⁷

The collection charge is \$39, and is a historic charge applied when a customer facing disconnection for non-payment would pay the crew directly to stop the disconnection – the charge was intended to cover the costs of crew dispatch. BC Hydro states that the charge is now obsolete, as most payments are done remotely, and crews are not allowed to accept payments for security/safety reasons.¹⁴⁸

BCOAPO is not opposed to BC Hydro's proposal to eliminate the collection charge.

3.4.4.9. DataPlus Service

BC Hydro is proposing to eliminate the DataPlus Service Charge of \$360 per year, which is currently applied to commercial customers with multiple accounts that are subscribed to the service – it provides detailed billing and consumption summaries electronically.¹⁴⁹ Such summaries are now available via MyHydro electronically.¹⁵⁰

BC Hydro initially said that it expected that all customers would be transitioned to the new self-serve tool by the end of June 2016¹⁵¹; at the oral hearing, BC Hydro stated that the full transition was expected by the end of August 2016.¹⁵²

BCOAPO has no issues with BC Hydro's proposal to eliminate the DataPlus Service Charge.

3.4.4.10. Credit Card Payment

BC Hydro initially considered whether credit card payments should be accepted and fees recovered through all ratepayers, or whether credit card payments should only be accepted if the fees could be passed on to the customer paying by credit card.¹⁵³ There was not a lot of support for recovering credit card payment fees, including customer feedback received through the August 2014 residential focus groups which indicated no desire for paying by credit cards.¹⁵⁴ Accordingly BC Hydro did not explore this option further. Customers wishing to pay by credit card will continue to be able to use a third-party provider where available.

¹⁴⁷ BC Hydro Final Argument, para. 162.

¹⁴⁸ Exhibit B-1, p. 8-17 to 8-18; BC Hydro Final Argument, para. 162.

¹⁴⁹ BC Hydro Final Argument, para. 162.

¹⁵⁰ *Ibid.*

¹⁵¹ BCOAPO 2.290.3.

¹⁵² Transcript Volume 6, p. 1086.

¹⁵³ Exhibit B-1, p. 8-18.

¹⁵⁴ Exhibit B-1, p. 8-18.

BCOAPO is of the view that credit card payments should not be accepted and include fees in general rates, as higher income people are more likely to pay their bills with credit cards, all ratepayers should not have to pay their credit card fees. As such, BCOAPO supports BC Hydro's proposal regarding credit card payment.

4. THE COMMISSION DOES HAVE JURISDICTION TO APPROVE PROGRAMS TARGETED AT LOW INCOME RESIDENTIAL RATEPAYERS

BCOAPO submits that contrary to what BC Hydro states in Part IV of its Final Argument, the Commission does have jurisdiction over programs targeted at low income residential ratepayers, including BCOAPO's proposed ESUB rate, Crisis Intervention Fund and low income Terms and Conditions. As we provided detailed submissions about the Commission's jurisdiction to implement programs aimed at low income ratepayers on September 26, 2016,¹⁵⁵ the following points are in response to BC Hydro's submissions.

In response to paragraphs 180-185 of BC Hydro's Final Argument, BC Hydro creates a false dichotomy between "Basic LI Jurisdiction" – which it defines as the "jurisdiction to determine and set preferential rates, terms or conditions for BC Hydro's low-income residential customers...in the absence of a cost-of-service justification"¹⁵⁶ – and the Commission's "jurisdiction to establish preferential rates, terms or conditions of service for low-income customers on an independent cost-of-service basis."¹⁵⁷ This implies that the Commission's jurisdiction to consider "ability to pay" is separate and distinct from its traditional rate setting analysis, which is not BCOAPO's position and is not an interpretation supported by the law. Rather, BCOAPO submits that the Commission's jurisdiction is comparable to the Ontario Energy Board's jurisdiction – while a cost-of-service analysis is the starting point of the Commission's jurisdiction, the Commission has the discretion to consider factors *in addition to* cost-of-service, which may include "ability to pay." By structuring its submissions on an either/or presumption, BC Hydro fails to adequately address whether the Commission has a more flexible jurisdiction to consider "ability to pay" alongside conventional rate setting principles.

In response to paragraph 189 of BC Hydro's Final Argument, BCOAPO agrees with BC Hydro that the Commission does not have explicit jurisdiction under the *UCA* to consider ability to pay. Rather, BCOAPO argues that the *UCA* provides the Commission

¹⁵⁵ BCOAPO provided its Final Submission in this proceeding on September 26, 2016. At footnote 138 of that submission, BCOAPO relied on Commission Order G-91-11 regarding Hemlock Valley Electrical Service Ltd. That Order was overturned in *Hemlock Valley Electrical Services Ltd. v. British Columbia (Utilities Commission)*, 1992 CanLII 5959 (BC CA) (<http://canlii.ca/t/231nn>) and BCOAPO apologizes for inadvertently relying on that decision of the Commission. The BC Court of Appeal found that while the Commission was directed to require HVES to file new tariff schedules enabling it to earn 13% on its determined rate base from July 1, 1990, the Court stated at para. 70 that "If the commission considers it necessary or appropriate to ameliorate rate shock by directing the phasing in of such revised rates, it shall do so in a way which meets the requirements of s. 65(4) as set out in these reasons."

¹⁵⁶ BC Hydro Final Argument, para. 180.

¹⁵⁷ *Ibid.*

with an explicit grant of the discretion to do so. BCOAPO notes that like the Commission, neither the Ontario Energy Board nor the Manitoba Public Utility Board has the explicit jurisdiction under their respective enabling statutes to consider ability to pay. Rather, each was found to have explicit jurisdiction to *exercise discretion* in setting just and reasonable rates. More specifically, each was found to have broad enough discretion under their respective enabling statutes to consider ability to pay in addition to more traditional rate setting principles. For example, the Ontario Energy Board's discretion arises in part out of the words "any method or technique" in s.36 of the *Ontario Energy Board Act*.¹⁵⁸

Legislative Intent

In response to paragraphs 190-204 of BC Hydro's Final Argument, BCOAPO does not view the BC NDP's proposed amendments as at all indicative of legislative intent. The BC NDP was the Official Opposition when the *UCA* was passed in 1980 and at the time of each of the proposed amendments in 2008, 2014, and 2016. The Official Opposition surely did not expect the proposed amendments to pass. Rather, the proposed amendments essentially amount to political posturing by the Official Opposition and should be understood as such.

Regardless of how the Official Opposition framed the proposed amendments, those amendments can only be understood as a response to the highly contested nature of the Commission's jurisdiction. This jurisdictional question was a live issue in BC Hydro's 2008 Residential Inclining Block (RIB) Rate Application¹⁵⁹ (which was already underway when the Official Opposition introduced the proposed amendment in April 2008) and remains a live issue in this Application. The Commission could have determined the jurisdictional question in the 2008 RIB Rate Application based on the arguments before it, but chose not to do so. As a result, the parties to this application are now essentially re-litigating the jurisdictional question. In the context of public anxiety over continuously increasing BC Hydro rates, the Official Opposition seized upon the lack of clarity around the Commission's jurisdiction.

Further, it is important to note that the NDP's proposed amendments are more prescriptive than the jurisdiction that BCOAPO says already exists. Therefore, the proposed amendments can be seen as narrowing existing jurisdiction, rather than expanding it. BCOAPO reiterates its position that the Commission already has discretion to depart from a pure cost of service analysis when setting just and reasonable rates. The proposed amendments, on the other hand, explicitly authorize the Commission to order a lifeline rate and prescribe what the Commission must do when ordering a lifeline rate. Further, the proposed amendments only authorize the Commission to implement a lifeline rate. They do not speak to the Commission's jurisdiction to order other low income programs. BCOAPO's position is that the Commission has the jurisdiction to order a range of low income programs and has

¹⁵⁸ *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B.

¹⁵⁹ <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=187>.

proposed a carefully thought out way of structuring the ESUB rate, Crisis Intervention Fund and low income Terms and Conditions.

BC Hydro places great weight on the Official Opposition's proposed amendments. However, it is more instructive to derive legislative intent from the Government's actions and non-actions. It is important to note that when passing the *UCA*, the Government could have drafted more prescriptive legislation that clearly defined the parameters of the Commission's jurisdiction. For example, the repealed s.19 of the *Ontario Energy Board Act* required a traditional cost of service analysis in very prescriptive terms:

19 (2) In approving or fixing rates and other charges under subsection (1), the board shall determine a rate base for the transmitter, distributor or storage company, and shall determine whether the return on the rate base ...is reasonable.

The rate base ...shall be the total of,

- (a) a reasonable allowance for the cost of the property that is used or useful in serving the public, less an amount considered adequate by the Board for depreciation, amortization and depletion;
- (b) a reasonable allowance for working capital; and
- (c) such other amounts as, in the opinion of the Board, ought to be included.

Further, given that the Commission's jurisdiction was a live issue in the 2008 RIB Rate Application, the 2015 RDA, and in the Official Opposition's proposed legislative amendments, the Government could have easily taken action to resolve the issue. However, despite passing several amendments to the *UCA* over the years, the Government has not passed any legislative amendments or issued any special directions restricting the Commission's jurisdiction with respect to a lifeline rate or low income programs more generally.

It is also important to note that there is no Hansard where a Government Minister or MLA has taken the opportunity to clarify that the Commission does not have jurisdiction to implement a lifeline rate—there is not even Hansard where a Government Minister or MLA has addressed the jurisdictional question at all. For example, turning to paragraph 197 of BC Hydro's Final Argument, the 2008 comment by the Honourable Richard Neufeld, then Minister of Energy, Mines, and Petroleum Resources, does not address the Commission's jurisdiction. Rather, then Minister Neufeld argues against a lifeline rate itself because it represents a change in the status quo and because British Columbia has "some of the lowest electricity rates in all of North America." Not only does this argument sidestep the question of jurisdiction, it implies that a lifeline rate could be appropriate in different circumstances, such as if electricity rates went up. BC Electricity rates have gone up significantly since 2008, and there is no end in sight to the increases.

Finally, BCOAPO notes that the fact that a bill was introduced into the legislature but not adopted is no evidence of the state of the law. BC's *Interpretation Act*¹⁶⁰ states the following:

No implications from repeal, amendment, etc.

- 37** (1) The repeal of all or part of an enactment, or the repeal of an enactment and the substitution for it of another enactment, or the amendment of an enactment must not be construed to be or to involve either a declaration that the enactment was or was considered by the Legislature or other body or person who enacted it to have been previously in force, or a declaration about the previous state of the law.
- (2) The amendment of an enactment must not be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person who enacted it to have been different from the law under the enactment as amended.
- (3) An amendment, consolidation, re-enactment or revision of an enactment must not be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

This section says a subsequent change in legislation can play no role in the judicial construction of legislation as it stood prior to the change – a principle that has also been recognized by the Supreme Court of Canada.¹⁶¹ If an actual amendment to legislation cannot be used to interpret the state of the law prior to its passing, *a fortiori*, a Private Member's Bill, especially one introduced by an Opposition MLA that never gets adopted by the Legislature cannot be relied upon to interpret the state of the law. This is particularly so, given the many extraneous reasons why Private Members' Bills and Opposition proposals to the Legislature are not adopted.

Fair, Just, and Not Unduly Discriminatory Standard

In response to paragraphs 205-209 of BC Hydro's Final Argument, BCOAPO disagrees that the history of judicial decisions on the jurisdiction of utility regulators can be seen as producing a set of coherent and generally applicable principles. The Supreme Court of Canada case *Attorney General (Canada) v Toronto (City)*¹⁶² was decided in 1893 and its precedential value in this proceeding is limited for several reasons. First, the decision is a *concurring* decision and *stare decisis* does not therefore apply. Second, the decision predates modern utility regulation legislation, as well as modern statutory tribunals tasked with regulating public utilities. Administrative tribunals are statutory

¹⁶⁰ [RSBC 1996], c. 238.

¹⁶¹ Re: *Rizzo and Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC) at para. 42, cited for this principle in *MacMillan Bloedel Ltd. v. Min. of Forests*, 2000 BCCA 351 (CanLII) at para. 67: <http://canlii.ca/t/53d1>.

¹⁶² 1893 CanLII 22, TAB 10 of BC Hydro's Book of Authorities.

creations and statutes prevail over pre-existing common law. Third, social and economic circumstances have changed greatly in the past 123 years, as has the common law. Fourth, the concurring decision predates the Modern Approach to statutory interpretation. Finally, this concurring decision did not preclude the Ontario Superior Court of Justice from deciding that the Ontario Energy Board had the jurisdiction to order a rate affordability program, having considered the Toronto (City) case directly at paragraph 51 for the point that “[t]he historical common law approach for public utility regulation has been that consumers with similar cost profiles are to be treated equally so far as reasonably possible with respect to the rates paid for services.”¹⁶³ The case also did not prevent the Ontario Court of Appeal¹⁶⁴ from confirming the OSCJ’s decision. It also did not preclude the Manitoba Public Utility Board from determining that it had jurisdiction to order Manitoba Hydro to develop a bill affordability program.

In response to paragraphs 208-209 of BC Hydro’s Final Argument, the case *Prince George Gas Co. v Inland Natural Gas Co.*¹⁶⁵ was an appeal of an order by BC’s former Public Utilities Commission. This is a case with a complicated set of facts. Westcoast Transmission Co. (“Westcoast”) was in the course of constructing a pipeline from Alberta to the United States, through British Columbia. It contracted with Inland Gas Company (“Inland”) for sale of its natural gas to the entire interior of British Columbia. One of the terms of the contract was that Inland construct a lateral line from the Westcoast transmission line at Savona, BC, to Osoyoos, BC. While the contract between Westcoast and Inland envisioned Inland distributing gas in Prince George, the Prince George Gas Co. (“the PG Gas Co.”) had a franchise with the city of Prince George to distribute natural gas in that city.

In response to applications from Inland and the PG Gas Co., the Public Utilities Commission granted Inland a CPCN for the whole of its undertaking envisaged by its contract with Westcoast, except distribution in Prince George area, and granted the PG Gas Co. a conditional CPCN to distribute gas in the Prince George area. One of the conditions of the PG Gas Co.’s CPCN was that it purchase natural gas from Inland at a price that “in initial years at least, will ensure that a contribution will be made by consumers in Prince George to the overall costs of that part of the Inland system but for the creation of which they might never have been in a position to receive gas at all.” Essentially, the Public Utilities Board wanted Prince George to contribute to Inland’s construction of the lateral line from the Westcoast transmission line at Savona on the basis that Westcoast’s contract with Inland was instrumental to Westcoast’s ability to construct its transmission line. The Public Utilities Commission ultimately approved a price that was a significant mark-up from the price charged by Westcoast to Inland. The PG Gas Co. and the city of Prince George appealed these decisions, arguing that they should be allowed to purchase natural gas directly from Westcoast; alternatively, they should only be required to pay Inland the wholesale rate payable by Inland to

¹⁶³ *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, 2008 CanLII 23487 (ON SCDC), <http://canlii.ca/t/1wzkk>.

¹⁶⁴ *Toronto Hydro-Electric System Ltd. v. Ontario Energy Board*, 2010 ONCA 284 at paras. 25-26, <http://canlii.ca/t/29c86>.

¹⁶⁵ 1958 CarswellBC 37, TAB 11 of BC Hydro’s Book of Authorities.

Westcoast; or in the further alternative, it should only be required to pay Inland a fair and reasonable charge for the service rendered by Inland in supplying gas to it wholesale.

The Honourable Justice O'Halloran overturned the Public Utilities Commission's decisions on the basis that the Public Utilities Commission

fell into a fundamental error of fact in holding that the city of Prince George 'might never have been in a position to receive gas at all' unless Westcoast Transmission Co. had received the financial and marketing support of respondent Inland Co. to obtain the required governmental authorizations to enable Westcoast to construct the natural gas pipeline...It is also plain from the evidence the Westcoast project became economically feasible only because the United States market was available.¹⁶⁶

He also ordered that PG Gas Co. was entitled to purchase natural gas directly from Westcoast.

The Honourable Justice Davey (whose decision BC Hydro cites) disagreed that the PG Gas Co. was entitled to purchase natural gas directly from Westcoast, because of Westcoast's contract with Inland. However, he did decide that price payable by the PG Gas Co. to Inland was invalid because the Public Utilities Commission did not undertake an adequate analysis of whether the price was a fair and reasonable charge in accordance with the Act. He stated:

108 It is significant that the condition does not fix the contribution the Prince George consumers may be required to make by reference to the cost of providing them with service. I do not overlook the words;

Overall costs of that part of the Inland system but for the creation of which they might never have been in a position to receive gas at all

109 Passing over the problems arising from the use of "might" instead of "would," such a circumstance will not necessarily make those costs part of the cost of providing service to the Prince George consumers. That will depend on other circumstances not mentioned in the condition.

110 So, while one result of the condition, depending on the mode of application, may be to require a contribution which can be supported as a proper rate, that will not be a necessary result.

Davey J. concluded by ordering the Public Utilities Commission to open an inquiry to assess a fair and reasonable price payable by PG Gas Co. in accordance with the Act, which could consider the argument that Inland is essential to Westcoast.

¹⁶⁶ *Supra* note 165, at para. 6.

Both O'Halloran J. and Davey J. appear to take greatest issue with the Public Utilities Commission's analysis in imposing the condition/approving the price payable by the PG Gas Co. O'Halloran J. allowed the appeals because he decided that the Public Utilities Commission "fell into a fundamental error in fact" in justifying the condition on the basis that Inland was essential to Westcoast. In that sense, he does not characterize the Public Utilities Commission's decisions as having the "express purpose" of creating a subsidy. Rather, he characterizes the Public Utilities Commission's decisions as being made on an erroneous cost of service basis. Davey J., on the other hand, allowed the appeals because he characterized the Public Utilities Commission as essentially rubberstamping a subsidy without deciding whether the price charged was fair and reasonable in accordance with the Act.

BCOAPO reiterates that this decision is not directly applicable to its argument because BCOAPO is not advocating that the Commission authorize a low income rate without reference to cost of service or with the "express purpose" of a subsidy. Rather, BCOAPO submits that there are three justifications for the low income rate: It will improve cost-reflectivity to low income, low-use customers; it will increase the efficiency of BC Hydro operations; and it will improve the affordability of essential electric service to low income customers.

Analysis of UCA Rate-Making Provisions

In response to paragraphs 210-211 of BC Hydro's Final Argument, we have already provided our general position on the statutory interpretation of the relevant sections of the UCA.

In response to paragraphs 212-215 of BC Hydro's Final Argument, BC Hydro places significant weight on a statutory interpretation principle which must be used "with the utmost caution." As described in the Yukon Court of Appeal case *Whitehorse (City) v. Darragh*, 2009 YKCA 10:

[40] Historically, there has been a cautionary approach taken to the application of the maxim. Chief Justice Laskin in *Jones* described the maxim as providing "at the most merely a guide to interpretation; it does not pre-ordain conclusions" (at 195-196). Pierre-André Côté, in *The Interpretation of Legislation in Canada*, 3rd ed. (Scarborough: Carswell, 2000) at pp. 337 and 339 also observed:

A contrario [reasoning], especially in the form *expressio unius est exclusio alterius*, is widely used. But of all the interpretive arguments, it is among those which must be used with the utmost caution. The courts have often declared it an unreliable tool, and, as we shall see, it is frequently rejected.

...

Since it is only a guide to the legislature's intent, *a contrario* reasoning should certainly be set aside if other indications reveal that its consequences go against the statute's purpose, are manifestly absurd, or

lead to incoherence and injustice that could not represent the will of Parliament.

The difficulty of the maxim is illustrated by turning BC Hydro's argument on its head. Given that the *UCA* expressly refers to certain restrictions on the Commission's rate setting jurisdiction (e.g. ss. 59 & 60), the "doctrine of implied exclusion" suggests that if the legislature had intended to prohibit the Commission from ordering programs targeting low income ratepayers, it would have referred to that restriction expressly in the legislation. For example, as described above, the repealed s.19 of the *Ontario Energy Board Act* is an example of a provision which required a pure cost of service analysis in very prescriptive terms.

It is also important to note that while the enabling statutes of the Ontario Energy Board and the Manitoba Public Utility Board do not expressly refer to low income rates (and therefore under BC Hydro's analysis, the "doctrine of implied exclusion" applies), the "doctrine of implied exclusion" did not preclude the Ontario Superior Court of Justice from deciding that the Ontario Energy Board had the jurisdiction to order a rate affordability program, or the Ontario Court of Appeal from confirming the OSCJ's decision. It also did not preclude the Manitoba Public Utility Board from deciding that it had jurisdiction to order the development of a bill affordability program.

In response to paragraphs 217-218 of BC Hydro's Final Argument, BCOAPO submits that the case *British Columbia Hydro and Power Authority v British Columbia Utilities Commission* ("*IRP Decision*"),¹⁶⁷ has very limited precedential value with respect to the scope of the Commission's rate setting jurisdiction. This case dealt with an appeal by BC Hydro of a Commission order. In 1993, the Commission issued its Integrated Resource Planning Guidelines, which included social and environmental objectives. In the Commission order at issue, the Commission integrated the IRP Guidelines as mandatory "Directions" in its Order. One of the Directions required BC Hydro to establish what is called a "collaborative committee" and other Directions set out in detail the composition of the collaborative committee and what BC Hydro was required to provide to the collaborative committee. These Directions followed a finding that BC Hydro had not complied with the IRP Guidelines which "require an explicit decision-making process which includes public involvement."

The question before the BCCA was "whether there is statutory authority for the Commission's imposition of the Guidelines to the extent required by the relevant Directions in the Decision on what is essentially an internal process for which the Directors of BC Hydro have the ultimate responsibility, both in respect of the process and for the selection of the product of the process."¹⁶⁸ The BCCA concluded that "no section of the Utilities Act expressly enables the Commission to impose by order its chosen form of controlling planning at the stage selected by it."¹⁶⁹

¹⁶⁷ 1996 CanLII 3048, TAB 12 of BC Hydro's Book of Authorities.

¹⁶⁸ *Supra* note 167, at para. 28.

¹⁶⁹ *Supra* note 167, at para. 42.

The BCCA does not address the Commission’s rate setting jurisdiction in this case because that jurisdiction was not at issue. Rather, the jurisdiction at issue was the Commission’s power to interfere with BC Hydro’s internal planning processes. At paragraph 56 of the decision, the BCCA even equated the Directions at issue to the Commission assuming management of the company. Given the subject matter of the appeal, the BCCA conducted no analysis or statutory interpretation of sections 59 and 60 in its decision (or the equivalent provisions at the time). In that context, BCOAPO views with caution the BCCA’s statements that “the administration of the jurisdiction conferred upon the Commission is amply delineated by express terms. There is no need to imply terms for this purpose”; and “both labour relations tribunals and securities commissions are expressly conferred with policy making powers. None such are conferred on the Commission.” Both of these statements can be interpreted as applying specifically to the Commission’s jurisdiction to order the Directions at issue, and more generally to “determine, punishable on default by sanctions, the manner in which the directors of a public utility manage its affairs.”¹⁷⁰

In response to paragraph 219 of BC Hydro’s Final Argument, BCOAPO has already discussed why the NDP’s proposed amendments should be given little weight in determining legislative intent. Further, BCOAPO is not arguing that the legislature specifically decided to authorize the Commission to consider ability to pay—rather it decided to give the Commission discretion in setting just and reasonable rates to depart from a pure cost of service analysis and consider additional factors, such as ability to pay.

In response to paragraph 220 of BC Hydro’s Final Argument, BCOAPO of course agrees with BC Hydro that the *Employment and Assistance Act (EAA)*¹⁷¹ is primarily oriented toward social welfare purposes whereas the *UCA* is primarily oriented toward the economic regulation of public utilities (though we note that neither the *UCA* nor the *EAA* has a purpose section—BC Hydro has compared general commentary from *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*¹⁷² to a specific provision of the *EAA*.) However, it is absurd for BC Hydro to refer to the existence of British Columbia’s income assistance legislation as negating the Commission’s jurisdiction to implement low income programs. Again, BC Hydro is relying on a faulty “either/or” proposition. First, the *UCA*’s purposes are not exclusively economic in nature. Most importantly, it charges the Commission with regulating in the public interest. Second, BCOAPO’s argument is not that the Commission has the jurisdiction to abandon economic regulation in favour of social welfare purposes. Rather, its argument is that while the Commission’s jurisdiction is grounded in a cost of service analysis, it has discretion to consider additional factors, such as ability to pay, in setting just and reasonable rates. Finally, BCOAPO’s proposals are extremely modest in comparison with the province’s welfare programs and can hardly be said to engage in significant income redistribution. The Commission therefore does not require an equivalent

¹⁷⁰ *Supra* note 167, at para. 58.

¹⁷¹ SBC 2002, c. 40.

¹⁷² 2006 SCC 4.

jurisdiction to the jurisdiction under the *EAA* in order to order and implement BCOAPO's proposals.

Further, BCOAPO notes that Manitoba and Ontario have welfare programs, yet this did not preclude the Ontario Superior Court of Justice from deciding that the Ontario Energy Board had the jurisdiction to order a rate affordability program, or the Ontario Court of Appeal from confirming the OSCJ's decision. It also did not preclude the Manitoba Public Utility Board from deciding that it had jurisdiction to order the development of a bill affordability program.

New Brunswick and Alberta

In response to paragraph 222 of BC Hydro's Final Argument, BCOAPO disagrees that the decisions from the New Brunswick Energy and Utilities Board (NBEUB) and the former Alberta Energy and Utilities Board (AEUB) have precedential value in this proceeding. BC Hydro states that those Boards found that in the absence of express language authorizing the particular utility board to set rates according to customers' income or ability to pay rather than according to the cost of serving those customers, low income rates are unduly preferential and/or unjustly discriminatory.

BCOAPO notes that the NBEUB and AEUB decisions have significantly less precedential value than the Ontario Superior Court of Justice decision (which was confirmed by the Ontario Court of Appeal), on which BCOAPO relies. Both Board decisions were issued prior to those Ontario decisions. To the extent that the Commission seeks to consider the decisions of other Canadian regulators concerning low income bill affordability programs, BCOAPO submits that the Manitoba Public Utility Board regulates in a context far more comparable to BC than either New Brunswick or Alberta, and, as BCOAPO has already noted, recently determined that it had jurisdiction to order the development of a bill affordability program.

Further, notwithstanding our view that the Commission should place little weight on the NBEUB and AEUB decisions, BCOAPO notes that the AEUB's analysis considered "lifeline rates" solely in the context of addressing social factors (i.e. ability to pay)¹⁷³; BCOAPO's proposals, on the other hand, are grounded not only in addressing bill affordability issues, but also in improving cost reflectivity and efficiency of BC Hydro's operations.

The NBEUB's decision does not indicate whether a comprehensive bill assistance program was put before the Board, or whether there was a cost of service or efficiency basis to the rate affordability program – it appears as though the only consideration was ability to pay. The NBEUB's jurisdictional analysis consists of one double-spaced page stating that it has no jurisdiction to offer a bill assistance program to low income ratepayers, and the Board provides no summary of the jurisdictional arguments that were made before it.

¹⁷³ Decision 2004-066 Re: *ENMAX Power Corporation 2004 Distribution Tariff Application*, 13 August 2004, section 9.2.6, pp. 159-161, TAB 16 of BC Hydro's Book of Authorities.

Nova Scotia

In response to paragraphs 223 to 233 of BC Hydro's Final Argument, BCOAPO has already provided a comprehensive analysis about the Nova Scotia decisions in its Final Submissions dated September 26, 2016.

BC Hydro highlights the following observations by the Nova Scotia Utility and Review Board (NSUARB) and the Nova Scotia Court of Appeal:

- The Board does not have a public policy-making role (NSUARB)
- Income redistribution is best left to elected representatives (NSUARB)
- The Board's regulatory power is a proxy for competition, not an instrument of social policy (NSCA)

BCOAPO notes that these traditional views on the regulatory compact, which BC Hydro argues throughout its submissions apply to the Commission's jurisdiction, are not generally applicable outside of the statutory interpretation of specific legislative provisions. For example, these views did not preclude the Ontario Superior Court of Justice from deciding that the Ontario Energy Board had the jurisdiction to order a rate affordability program, or the Ontario Court of Appeal from confirming the OSCJ's decision. It also did not preclude the Manitoba Public Utility Board from deciding that it had jurisdiction to order the development of a bill affordability program. While these considerations may be part of Nova Scotia's prescriptive *Public Utilities Act*, BCOAPO argues that the *UCA* bears more similarities to the legislation in Ontario and Manitoba than Nova Scotia's *Public Utilities Act*.

In response to paragraph 225 of BC Hydro's Final Argument, BCOAPO has already explained above that the BCCA's statements in the *IRP Decision* must be treated with utmost caution, since that case dealt with a very specific jurisdictional question and did not in any way address the Commission's rate setting jurisdiction.

Ontario

In response to paragraphs 234 to 237 of BC Hydro's Final Argument, BCOAPO has already provided a comprehensive analysis about the Ontario decisions in its Final Submissions dated September 26, 2016.

In response to paragraph 236 of BC Hydro's Final Argument, the repealing of s.19 of the *Ontario Energy Board Act* was merely one consideration in the Ontario Superior Court of Justice's decision and was not necessarily determinative. BCOAPO has reviewed the Ontario Superior Court of Justice's considerations in our Final Submissions dated September 26, 2016. Many of the Ontario Superior Court of Justice's considerations have parallels in British Columbia. It is also important to note the clear similarities between s.36 of the Ontario *Energy Board Act* and s.60(1)(b.1) of the *UCA*, as set out in BCOAPO's September 26, 2016 Final Submissions.

In response to paragraph 239(1) of BC Hydro's Final Argument, BCOAPO agrees that Section 60(1)(b.1) does not expressly authorize the Commission to consider low income issues and does not narrowly limit the Commission's jurisdiction to the consideration of low-income issues (in addition to cost of service). Again, BCOAPO adopts the Ontario Superior Court of Justice's interpretation of s.36 of the *Ontario Energy Board Act* in arguing that s.60(1)(b.1) authorizes the Commission to depart from a pure cost of service analysis and exercise its discretion to consider additional factors, such as ability to pay. It is important to note that s.36 of the *Ontario Energy Board Act* also does not expressly authorize the Commission to consider low income issues and does not narrowly limit the Commission's jurisdiction to the consideration of low-income issues (in addition to cost of service). These considerations did not preclude the Ontario Superior Court of Justice from deciding that the Ontario Energy Board had the jurisdiction to order a rate affordability program, or the Ontario Court of Appeal from confirming the OSCJ's decision.

In response to paragraph 239(2), it is difficult to distinguish this argument from BC Hydro's arguments in paragraph 239(1). BCOAPO reiterates that the language in s.36 of the *Ontario Energy Board Act*—which is very similar to the language in s.60(1)(b.1)—did not preclude the Ontario Superior Court of Justice from deciding that the Ontario Energy Board had the jurisdiction to order a rate affordability program, or the Ontario Court of Appeal from confirming the OSCJ's decision.

In response to paragraph 239(3), it is unclear what BC Hydro means by this statement.

In response to paragraphs 240-244 of BC Hydro's Final Argument, BCOAPO's proposals would encourage BC Hydro to increase efficiency, reduce costs and enhance performance. Minister Neufeld's statements are primarily descriptive about the changes to the *UCA*. Most of the amendments discussed by Minister Neufeld are about modernizing and streamlining the regulatory process. He also mentions the creation of the customer choice program for gas customers. However, the general thrust of his statement is that the amendments empower the Commission. For example, he states "there is a need for the regulator to be able to exercise greater flexibility and responsiveness to act in the public interest." This suggests that the legislature did intend for the Commission to have a greater degree of discretion, which accords with BCOAPO's position on the Commission's jurisdiction.

In response to Minister Neufeld's statement, MLA MacPhail stated:

Wow. What was that? It certainly wasn't about the thrust of Bill 40 at all. I can understand why the minister wanted to deal with the minutiae and not the real intent of Bill 40, the Utilities Commission Amendment Act, 2003. But let me tell the public what's really going on here.

MLA MacPhail then went on to detail the power projects removed from the Commission's oversight by the amendments, which she said was the true intent of the legislation.

It is also worth noting the Honourable S. Hagen's comments in introducing the amendments for a first reading:

Hon. S. Hagen: I'm pleased to introduce Bill 40, the Utilities Commission Amendment Act, 2003. These amendments modernize the Utilities Commission Act and are a positive step forward in implementing the province's new energy plan, a plan that will deliver low electricity prices, a secure and reliable supply of energy, more private sector opportunities and environmental responsibility.

The act will go a long way in ensuring efficient regulations of B.C. utilities, which is necessary to ensure that public utilities deliver low-cost energy and are able to reliably serve domestic needs. These amendments will also streamline the existing regulations.

Bill 40 will facilitate the development of domestic energy sources. Electricity distributors are required to acquire a new supply on a least-cost basis, with regulatory oversight by the B.C. Utilities Commission.

The act has been amended to encourage utility investment that supports environmentally sustainable responsibility through conservation and energy efficiency. The act modernizes British Columbia's regulatory structure, streamlines regulations and introduces a framework for customer protection and choice.

These legislative changes will benefit customers. By securing a low-cost energy advantage, British Columbia can build on its strengths to help revitalize the economy and create jobs through private sector participation. The bill I'm introducing today demonstrates our government's commitment to strengthen the British Columbia Utilities Commission to benefit all British Columbians.

I move that the bill be placed on the orders of the day for second reading at the next sitting of the House after today.

Bill 40 introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

It is clear again that the legislative intent is to “strengthen” the Commission in the public interest “to benefit all British Columbians.” In strengthening the Commission, the legislative intent is to ensure that public utilities “deliver low-cost energy and are able to reliably serve domestic needs.”

Manitoba

In response to paragraphs 249 to 250 of BC Hydro's Final Argument, BCOAPO has already provided a comprehensive analysis about the Manitoba decision in its Final Submissions dated September 26, 2016.

5. CONCLUSION

BCOAPO supports many of BC Hydro's proposals, with only a few exceptions and clarifications as set out above. We are asking that the Commission order BC Hydro to implement the ESUB rate, Crisis Intervention Fund, and various Terms and Conditions as set out in our Final Submission of September 26, 2016, and say that the Commission does have the jurisdiction to implement these programs.

All of which is respectfully submitted this 11th day of October, 2016.

Sarah Khan, Erin Pritchard and Kate Feeney
Staff Lawyers, BC Public Interest Advocacy Centre, on behalf of BCOAPO