

BRITISH COLUMBIA UTILITIES COMMISSION

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

Reply 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 reply 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 and interveners' October 11, 2016 Arguments in BC Hydro's 2015 Rate Design Application (2015 RDA). This reply is limited to issues related to BCOAPO's proposals as set out in our September 26, 2016 Final Argument.

We first describe the views of the registered interveners that either generally support or take no position on BCOAPO's proposals and provide a response to their submissions. We then provide a response to BC Hydro, the Commercial Energy Consumers and FortisBC's submissions.¹

2. SUPPORT FOR BCOAPO'S PROPOSALS IS WIDESPREAD

2.1. Response to Intervenors Who Are Supporting All or Most of BCOAPO's Proposals

The BC Sustainable Energy Association and Sierra Club of BC (BCSEA-SCBC), the Non-Integrated Areas Ratepayers Group (NIARG), which is made up of the Heiltsuk Tribal Council in Bella Bella, Shearwater Marine Limited on Denny Island and the Gitga'at First Nation in Hartley Bay, and the Movement of United Professionals (MoveUp), the union representing the majority of BC Hydro's inside workers, each support nearly every single proposal BCOAPO has put forward. Below we address and respond to these interveners' Final Arguments.

2.1.1. Response to BCSEA-SCBC

BCSEA-SCBC endorse BCOAPO's request for a strategy to assist low income ratepayers who are having difficulty paying their electricity bills, and "encourage the Commission to acknowledge that BC Hydro's low-income customers have a serious problem affording electricity service, to identify the ways in which the Commission can and will use its statutory powers to help address the problem, and to make the appropriate orders and directions to begin to tackle the problem."² BCOAPO adopts paragraphs 215 – 238 and 245 of BCSEA-SCBC's Final Argument.

BCSEA-SCBC supports Commission approval of BCOAPO's proposed Essential Services Usage Block (ESUB). In response to paragraphs 239 – 241 of BCSEA-SCBC's Final Argument, while BCOAPO believes that there is sufficient information on the record for BC Hydro to implement the ESUB proposal, BCOAPO is not opposed to the Commission directing BC Hydro to develop and file a residential low income rate

¹ Any argument that was raised by parties in their Final Arguments and not specifically responded to in this submission is not waived, but is considered to have been addressed in BCOAPO's Final Argument of September 26, 2016.

² BCSEA-SCBC Final Argument, para. 219.

proposal, in consultation with BCOAPO, low income customers, stakeholders and government agencies such as MSDSI.

BCSEA-SCBC support a Crisis Intervention Fund “whose purpose is to respond to unexpected and temporary circumstances that place a customer’s electricity service in jeopardy.”³ In response to paragraph 246 of BCSEA-SCBC’s Final Argument, while BCOAPO believes that the Crisis Intervention Fund will result in benefits across all of BC Hydro’s customer classes, BCOAPO is not opposed to restricting funding for the Crisis Intervention Fund to residential customers.

BCSEA-SCBC support many of BCOAPO’s proposed terms and conditions, with a few exceptions and modifications, which we respond to in section 3.8 below.

In response to paragraph 248 to 258, while BCOAPO believes that waiver of BC Hydro’s \$30 Minimum Reconnection Charge should be limited to low income customers, BCOAPO is not opposed to a general exclusion for all residential customers where the disconnection resulted from non-payment, as proposed by BCSEA-SCBC, particularly given the drastic increase in completed disconnections following the introduction of smart meters. BCOAPO notes that BCSEA-SCBC support BCOAPO’s proposed approach (i.e. limiting reconnection fee waiver to low income customers) in the alternative.⁴

BCSEA makes a number of other points regarding BCOAPO’s proposals, which we address in section 3(d) below.

2.1.2. Response to NIARG

NIARG notes that rising electricity rates and related rate design issues are every bit as important to Zone 1B and Zone II customers as they are to Zone 1 customers.⁵ NIARG cites BCOAPO expert witness Seth Klein’s evidence in which he noted that poverty rates within BC are particularly acute for certain demographic groups, including Indigenous people. NIARG notes that BC Hydro’s Non-Integrated Areas contain a significant First Nations population, making BCOAPO’s low income customer proposals particularly pertinent for NIARG.⁶

NIARG supports approval of BCOAPO’s proposed ESUB.

At page 14 of its Final Argument, NIARG states that providing crisis assistance is a laudable objective, but that BCOAPO’s Crisis Intervention Fund requires additional development and clarification. In response, BCOAPO notes that while it has set out a framework for the structure, funding and administration of the Crisis Intervention Fund, it has asked the Commission in the alternative to direct BC Hydro to prepare and file,

³ BCSEA-SCBC Final Argument, para. 244.

⁴ BCSEA-SCBC Final Argument, para. 256-258.

⁵ NIARG Final Argument, p. 2.

⁶ NIARG Final Argument, p. 11.

within six months of the date of the Commission's order, a proposed crisis assistance program for low income customers who have arrears with BC Hydro and are unable to pay their electricity bills.⁷ Additionally, the Ontario Low Income Energy Assistance Program Emergency Funding Assistance program provides a working example of a crisis fund, and BC Hydro will be able to draw on the Ontario experience to model a Fund that would suit BC Hydro's customers.

NIARG supports all of BCOAPO's proposed terms and conditions and other relief sought.

2.1.3. Response to MoveUp

MoveUp provides detailed submissions explaining why the Commission has the jurisdiction to order low income rates, a crisis intervention fund and terms and conditions, and urges the Commission to approve all of BCOAPO's low income proposals:

It is clear to the Union that yes, this Commission is indeed empowered by the UCA to approve a low income rate and after a review of the evidence, MoveUP has determined the proposed rate and other measures are sound and will help alleviate some of the effects of BC Hydro's rising energy costs on low income ratepayers. As a result, the Union urges this Commission panel to approve BCOAPO's low income proposals, particularly the ESUB rate, the Crisis Intervention Fund and the various Terms & Conditions described in detail in BCOAPO's September 26, 2016 Final Submission.⁸

BCOAPO adopts MoveUp's submissions on pages 17-23 respecting the jurisdiction of the Commission to order relief for low income BC Hydro ratepayers.

2.2. Response to Interveners Who Are Providing More Limited Support for BCOAPO's Proposals

The Association of Major Power Customers (AMPC), Zone II Ratepayers Group (Zone II RPG), comprising the 400 member Kwadacha First Nation, and the Commercial Energy Consumers (CEC), provide more limited support for BCOAPO's proposals.

2.2.1. Response to AMPC

At paragraph 17 of its Final Argument, AMPC provides some support for BCOAPO's proposals, stating that "AMPC does accept that 'lifeline' programs may serve an important policy purpose." AMPC takes no position on whether the Commission has jurisdiction to order the ESUB as BCOAPO proposes, as "AMPC's members are not affected by a determination of the intra-class constituencies for the residential rate

⁷ BCOAPO Final Submission on BCOAPO's September 26th Final Arguments, p.111.

⁸ MoveUp Final Argument, pp. 23-24.

class.”⁹ AMPC also has no objection in principle to the proposed Crisis Intervention Fund.

In response to paragraph 58 to 63 of AMPC’s Final Argument, as noted above with respect to BCSEA-SCBC, while BCOAPO believes that the Crisis Intervention Fund will result in benefits across all of BC Hydro’s customer classes, BCOAPO is not opposed to restricting funding for the Crisis Intervention Fund to residential customers.

2.2.2. Response to Zone II Ratepayers Group

The Zone II Ratepayers Group (Zone II RPG) has put forward a series of proposals which are similar in nature to BCOAPO’s proposed terms and conditions. The Zone II RPG states that “any implementation of BCOAPO’s proposal for an Essential Services Usage Block (“ESUB”) would need to be adjusted to reflect the difference in NIA rate structure where the first rate step is 1500 kWh. The higher first step consumption is directionally more representative of consumption in remote northern communities. We anticipate that this will be addressed in the Module 2 proceedings.”¹⁰

The Zone II RPG also states that “[l]ow income terms and conditions are welcome measures to assist customers who are facing unaffordable electricity bills.” Many of the Zone II RPG’s proposals for low income terms and conditions, business practices and customer service for the Kwadacha First Nations and other remote First Nations communities in Zone II are very similar to those that BCOAPO has proposed.

For example, at page 11, the Zone II RPG is concerned that BC Hydro’s proposal to allow repayment over longer periods may not be an adequate amount of time for customers to make payments depending on when the customer enters into the installment plan, and suggests a payment period of up to 12 months. In addition, Zone II RPG requests the Commission direct BC Hydro to develop a customer service group for its remote customers in Zones IB and II¹¹ and a single point of customer service contact for First Nations.¹² These are similar to BCOAPO’s requests for a specialized low income customer services unit.

2.2.3. Response to Commercial Energy Consumers (CEC)

The CEC has provided some limited support for the relief BCOAPO seeks, as follows:

- The CEC recommends that the Commission approve BC Hydro’s proposal regarding sureties in lieu of cash security deposits with the changes recommended by BCOAPO (i.e. sureties do not need to be BC Hydro customers and sureties only need to guarantee the amount of the security deposit)¹³; and

⁹ AMPC Final Argument, para. 57.

¹⁰ Zone II RPG Final Argument, p. 17.

¹¹ Zone II RPG Final Argument, p. 18.

¹² Zone II RPG Final Argument, p. 20.

¹³ CEC Final Argument, paras. 263-264.

- The CEC submits that BC Hydro’s current prohibition on customers having installment terms that extend into the next winter season are somewhat restrictive and do not consider individual circumstances. The CEC submits it would not be unreasonable for BC Hydro to consider relaxing this regulation, enabling decision for repayment to be determined on a case by case basis.¹⁴

We respond to other aspects of the CEC’s Final Argument in sections 3 & 4 below.

2.3. Interveners Who Have Taken No Position on BCOAPO’s Proposals

The remaining interveners who submitted argument, including the Canadian Association of Petroleum Producers, the Clean Energy Association of BC, Sharon Noble, and the E-Plus Homeowners Group have taken no position on BCOAPO’s proposals.

The following non-individual interveners did not submit arguments, and consequently, have taken no position on BCOAPO’s proposals: Peace River Regional District Board, Simon Fraser University, University of British Columbia, Peace Valley Environment Association, Peace Valley Landowner Association, Vancouver Airport Authority, Progress Energy Canada Ltd., District Of Hudson’s Hope, Dewdney Area Improvement District, City Of New Westminster, and the City of Vancouver Neighbourhood Energy Utility, and despite being a registered intervener in the 2015 RDA, the BC Ministry of Energy and Mines has taken no position on BCOAPO’s proposals.

3. RESPONSE TO BC HYDRO AND CEC REGARDING BCOAPO’S SPECIFIC PROPOSALS

3.1. Overarching Issues

3.1.1. Burden of Proof

In reply to paragraphs 6-8 of BC Hydro’s October 11th Argument, BC Hydro notes that BCOAPO does not explicitly address the burden of proof regarding the relief BCOAPO seeks in its September 26th Final Argument.¹⁵

BCOAPO’s view is that it was unnecessary to explicitly address the burden of proof in its Final Argument. BCOAPO’s understanding is that any party seeking relief from the Commission in rate design applications is required to meet the burden of proof on a balance of probabilities.

Mr. Christian’s letter of August 29, 2016 sets out the agreement of counsel with respect to the burden of proof.¹⁶ BCOAPO agrees that it bears the burden of proof on the relief it seeks, on a balance of probabilities, and submits that it has done so. It is for the Commission to determine whether BCOAPO has met the burden of proof with respect to the relief it seeks.

¹⁴ CEC Final Argument, paras. 270-273.

¹⁵ BC Hydro October 11th Final Argument, para. 8.

¹⁶ Exhibit B-59; Exhibit A-39, Attachment 1.

BCOAPO further submits that BC Hydro appears in practice to take a similar view, given that BC Hydro similarly did not explicitly address the burden of proof with respect to its own proposals in its September 26th Final Argument. Clearly, BC Hydro also bears the burden of proof in establishing that each of its proposed rates are in the public interest or otherwise just and reasonable. Consistent with this approach, BC Hydro also did not address burden of proof in its 2007 Rate Design Final Argument (Phase I),¹⁷ addressing it only in reply to interveners,¹⁸ yet the Commission made findings about whether BC Hydro had met the burden of proof with respect to certain proposals in that proceeding – for example, with respect to its then-proposed phase-out of E-Plus service.¹⁹

3.1.2. General Arguments

At paragraph 19 of its October 11th Argument, BC Hydro argues that BCOAPO has “offered evidence of a problem (the nature and extent of poverty in British Columbia as described by Mr. Klein and the BCOAPO’s lay witnesses) and opinion evidence of a solution (Mr. Colton’s recommendations), but no evidence that the solution will address the problem,” and that, as a result, “the Commission has no basis to accept on a balance of probabilities, or otherwise, that the affordability element of Mr. Colton’s recommendations can be satisfied.” On the contrary, BCOAPO notes that both Mr. Colton’s Direct Testimony²⁰ and BCOAPO’s September 26th Final Argument clearly set out how BCOAPO’s proposals address the issues raised in Mr. Klein’s evidence.

At paragraph 180 of its Final Argument, the CEC appears to rely on a discussion from the oral hearing comparing BCOAPO’s proposals to requiring the food industry to subsidize food purchases. In addition to Mr. Colton’s response during that discussion regarding other justifications for BCOAPO’s proposals (cited at paragraph 181 of CEC’s Final Argument), BCOAPO notes that the comparison of electricity to the food industry is not apt. No companies in the food industry have a monopoly. There are a wide range of stores that sell food, with a wide variety of prices. The price of food at Whole Foods, for example, is generally much higher than the price of food at No Frills. Low income people are not required to shop at one particular chain of grocery stores – they can shop around and look for the best deals. They cannot shop around for cheaper electricity as BC Hydro has a monopoly on residential electricity in its service territory.

3.1.3. Expertise of Mr. Colton

At paragraphs 54 – 62 of its October 11th Argument, BC Hydro attacks Mr. Colton’s expertise and qualifications, stating in essence that Mr. Colton is a biased and partisan advocate for low income rates who relies on anecdotal evidence from outside of BC.

¹⁷ <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=145>. Final Arguments and BC Hydro’s Reply Argument for this proceeding are all in a Compressed (zipped) folder on the proceeding page.

¹⁸ *Ibid.*

¹⁹ Commission Decision, 2007 BC Hydro Rate Design Application, p. 136:
http://www.bcuc.com/Documents/Decisions/2007/DOC_17029_10-26_BCHydro-Rate-Design-Phase-1-Decision.pdf

²⁰ Exhibit C2-12, Direct Testimony of Roger Colton.

For example, at paragraph 55, BC Hydro notes that Mr. Colton did not advise BCOAPO as an unbiased consultant, but instead worked with the organization in the decision-making process to develop proposals that would suit BCOAPO. BCOAPO cannot see how working collaboratively with BCOAPO to develop proposals appropriate to BC Hydro detracts from Mr. Colton's expertise. Moreover, BCOAPO is unclear how this differs from BC Hydro's own witnesses, who are hardly "unbiased" and detached from the development of BC Hydro's proposals. While it is true that BCOAPO amended its proposals after retaining Mr. Colton, it did so to adjust for what, in his expertise, could be justified based on expected improvements to low income customer bill affordability, cost-reflectivity, and efficiency of BC Hydro's operations. BCOAPO retained Mr. Colton's expertise to develop proposals that would stand up to regulatory scrutiny and it is ludicrous that BC Hydro now seeks to criticize the groups that comprise BCOAPO for retaining an expert to develop and refine their proposals.

In reply to paragraphs 56 – 62, Mr. Colton has relied on a wide variety of reports about low income rate design in addressing the proposals that BCOAPO is recommending. The literature he relies on is necessarily from outside of BC as BC has no low income utility programs outside of the two low income DSM programs offered by BC Hydro and FortisBC. BCOAPO was forthcoming during the pre-RDA stakeholder process that it was going to present a series of proposals for low income ratepayers. BC Hydro filed rebuttal testimony and could have referenced literature reviews countering the literature upon which Mr. Colton relied, but did not do so. Further, BC Hydro acknowledges at paragraph 57 of the same argument that Mr. Colton was invited to comment on the OEB data "as he saw fit." BC Hydro cannot then criticize what Mr. Colton chose to comment on as being "advocacy," just because it is not beneficial to BC Hydro's argument. If BC Hydro wanted Mr. Colton to comment on a particular question, BC Hydro should have asked Mr. Colton that question.

BCOAPO submits that parties had the opportunity to thoroughly test Mr. Colton's expert evidence in this proceeding.

3.1.4. Expertise of Mr. Klein

In reply to paragraph 53 of BC Hydro's October 11th Argument, BCOAPO notes that BC Hydro did not object to Mr. Klein being accepted as an expert in the areas in which he was qualified. BC Hydro had every opportunity to file evidence discounting the evidence Mr. Klein presented, but did not do so. Mr. Klein's evidence should not be discounted simply because BC Hydro makes an unsubstantiated allegation about Mr. Klein's qualifications.

3.2. Response to BC Hydro and CEC Regarding the Essential Services Usage Block

As there is significant overlap between BC Hydro and the CEC's arguments respecting BCOAPO's proposed ESUB, BCOAPO will respond to these two arguments in this section in a somewhat combined way rather than sequentially responding to each paragraph in the two parties' respective October 11th Arguments.

As set out in our Final Argument of September 26th, BCOAPO is proposing that the Commission order BC Hydro to implement the ESUB, a means-tested rate that is specifically designed to promote three regulatory objectives:

- To improve cost-reflectivity for low use, low-income customers;
- To improve the efficiency of BC Hydro operations, specifically with respect to BC Hydro's response to non-payment; and
- To improve affordability for low-income customers.

At paragraphs 9 – 13 of its October 11th Argument, BC Hydro argues that BCOAPO has acknowledged that it must demonstrate that the ESUB will further all three of these objectives in order for the Commission to approve the ESUB. With respect, this is inaccurate. While BCOAPO has demonstrated that ESUB will advance all three objectives, BCOAPO has never indicated that all of the three foundations must be simultaneously established to merit ESUB's adoption.

Notwithstanding, BCOAPO is not arguing that the three objectives that underlie the proposed ESUB are unrelated. Low income bills are made more affordable under ESUB *because* the rates are structured to better reflect the lower costs they impose on the system. The efficiency of BC Hydro's effort to collect its billed revenue in a complete, timely, regular and unsolicited manner improves *because* bills are made more affordable.²¹ Low income customers impose fewer costs on the BC Hydro system *because* they simply cannot afford the various appliances that contribute to BC Hydro's peak.²²

3.3. BC Hydro and the CEC Left Most of the Foundation for ESUB Unchallenged

BC Hydro and the CEC are the only parties to the 2015 RDA that specifically oppose the ESUB.²³ It is just as important to note that the response to ESUB consists as much of what those parties did *not* challenge as it consists of what those parties did challenge. The foundations for ESUB that were left unchallenged include:

Cost-Reflectivity:

- BC Hydro reports that its "2013 RIB Evaluation Report found that average per-capita disposable income for the Province of B.C. has a statistically significant

²¹ During the oral hearing, Mr. Colton testified that when he uses the term "unsolicited," he intends it to mean that the utility does not have to pursue bill payment through credit and collection activities (Transcript, Volume 7, p. 1240, lines 19- 22).

²² As discussed in BCOAPO's Final Argument dated September 26th, the "peak" that BCOAPO references are the non-coincident peak (NCP) and four coincident peaks (4CP) that BC Hydro uses to allocate its demand costs.

²³ While not explicitly stated in its Final Argument, BCOAPO assumes that FortisBC also opposes the ESUB. FortisBC's Final Argument is restricted to submissions about the Commission's jurisdiction to establish special rates for low income residential customers.

effect on consumption.”²⁴ BC Hydro further notes that its 2014 REUS indicates that “electricity consumption varies with household income (i.e., overall there is a positive correlation). This relationship is statistically significant.”²⁵

- BC Hydro’s own empirical data presented in this proceeding clearly showed that a disproportionate share of low use customers is low income and, conversely, that a disproportionate share of low income customers is also low-use.²⁶
- Higher use residential customers tend to have lower load factors. By implication, therefore, lower use customers tend to have higher load factors. Low-use, high load factor, customers impose lower costs on BC Hydro’s system. BC Hydro acknowledges that “low load factors are indicative of customers that are *relatively more costly to serve* and load factor is therefore a consideration when evaluating rate class segmentation”²⁷
- \$1,013.8 million of BC Hydro’s total \$1,060.50 million residential demand costs (96%) were allocated using either the 4CP or NCP factors. Moreover, BC Hydro notes the obvious: demand costs far outstrip energy costs in customer rates. Demand costs, in other words, are the most substantial part of rates, and those demand costs are allocated using the 4CP and NCP factors.²⁸
- BC Hydro’s data shows that low-use customers have lower peaks using both the 4CP and NCP factors, combined with higher load factors. As a result, the lower demand costs are spread over more kWh of consumption, thus lowering the cost per kWh even further.²⁹
- These reduced costs are not reflected in lower rates to lower-use customers.

²⁴ Exhibit C2-12, Direct Testimony of Roger Colton, p. 5 (PDF p. 10).

²⁵ Exhibit C2-12, Direct Testimony of Roger Colton, p. 5 (PDF p. 10) (internal citations omitted).

²⁶ Exhibit C2-12, Direct Testimony of Roger Colton, pp. 5-6 (PDF p. 10-11) (internal citations omitted). In its October 11th Argument, at paragraphs 22 - 23, BC Hydro seeks to resurrect the argument that not all low-income customers are low consumption and that most low-use customers are not low-income. The distributional consequences of a rate block such as ESUB, however, can be determined using internationally accepted metrics. The two metrics cited in BCOAPO’s IR response to BCUC IR 2.2, at the Attachment at pages 11-12, were the “beneficiary incidence” test and the “benefit incidence” test (called the “Omega” tests). When BCOAPO was explicitly asked to “comment on these observations: Low usage is not a good proxy for low income. While many low income customers have low usage, many other low income customers have medium or high usage” (among others), BCOAPO provided this report in its entirety, and incorporated, by reference, the section of that report describing the two Omega metrics (“benefit incidence”; “beneficiary incidence”). (BCSEA IR 4.2). BCOAPO stated further when requested for “comment”: “Consistent with that analysis, while BC Hydro has not used the beneficiary incidence, the benefit incidence or the Omega metric in *any* of its rate design analysis (BCOAPO 1.79 and 1.80), the beneficiary incidence and benefit incidence discussion set forth by BCOAPO indicates that it is appropriate to find that low use and low income are related for BC Hydro.” (BCSEA IR 4.2).

²⁷ Exhibit C2-12, Direct Testimony of Roger Colton, p. 9 (PDF p. 14), quoting BC Hydro’s 2015 Rate Design Application, at p. 4-8; BCOAPO 1.49.1.

²⁸ BCOAPO’s September 26th Final Argument, p. 55 (internal citations omitted).

²⁹ BCOAPO’s September 26th Final Argument, p. 55-56; see also, Transcript Volume 7, p. 1304, lines 3-26; 1305, lines 1-5.

- The proposed ESUB would provide a bill reduction of between \$9 and \$16 per month on low-use, low income bills. The ESUB, in other words, will mitigate, but not completely protect, low income customers against rate increases for the next three years.³⁰

BCOAPO submits that the above-stated unchallenged facts, unto themselves, establish a basis for approving ESUB.

3.4. BCOAPO Has Established Each of the Three Justifications for ESUB

BC Hydro and the CEC both assert that BCOAPO's three regulatory justifications have not adequately been established. BCOAPO submits that BC Hydro and CEC's arguments must be rejected when viewed in light of the evidentiary record in this proceeding.³¹

ESUB Will Improve the Efficiency of BC Hydro's Collection Efforts

At paragraph 237 of its Final Argument, CEC argues that BCOAPO's evidence with respect to ESUB's potential to improve the cost efficiency of BC Hydro's collection is "limited...and is effectively countered by the BC Hydro rebuttal evidence." Given that BC Hydro's rebuttal evidence did not address the improved efficiencies that BCOAPO identifies, CEC's argument that such evidence "effectively countered" BCOAPO's evidence should be rejected.

The only argument that BC Hydro put forward in response to BCOAPO's factual demonstration was its assertion that it is already doing a good job of collections.³² To support this assertion, BC Hydro cherry-picked certain statistics. Zone II RPG specifically asked Mr. Colton to explain what led him to the conclusion that the collection process is ineffective and inefficient.³³ While BC Hydro provided updated information on its credit and collection activities, and its level of residential arrearages,³⁴ none of

³⁰ Exhibit C2-12, Direct Testimony of Roger Colton, p.19 (PDF p. 24).

³¹ In its October 11th Argument at footnote 45, BC Hydro asserts that "the public policy decision that...the utility service should be preserved where feasible" is "an alternative output referenced by Mr. Colton." Referencing Mr. Colton's testimony, BC Hydro asked "is the 'defined set of objectives' that Mr. Colton refers to the preservation of 'utility service where feasible.'"? Mr. Colton responded "no." (Exhibit C2-17, BCOAPO Response to BC Hydro 20.1). Mr. Colton explained that "the preservation of utility service where feasible is an outcome, not an objective..." (Exhibit C2-17, BCOAPO Response to BC Hydro 20.1.1). In other words, when low income customers make payments in a more complete, timely, regular and unsolicited manner, as BCOAPO has demonstrated will occur through both ESUB and its proposed Terms and Conditions, it is more likely that "the preservation of utility service" will occur. The "preservation of utility service" unquestionably is a result of improving the complete, timely, regular, unsolicited payment of bills that will flow from adoption of ESUB and of BCOAPO's proposed terms and conditions.

³² BC Hydro October 11th Final Argument, para. 40.

³³ Exhibit C2-22, BCOAPO Response to Zone II 2.1.

³⁴ Exhibit B-31, BC Hydro Rebuttal Evidence, Attachment 2.

that updated data affects, or in any way detracts from the conclusions below concerning the efficiency and effectiveness of BC Hydro’s collections processes:

- “This data also shows how BC Hydro collection activity is less effective when directed toward a particular population. Even if collection activity affects payment of accounts with arrears in the younger age ranges, there is a somewhat irreducible population for whom collection activity does not affect whether the account gets paid. . . Even while the >90-day and >120-day number of accounts is remaining constant (or even somewhat declining), the dollars in those age ranges are increasing. The conclusion is that there are some accounts for whom BC Hydro’s existing collection practices are not only not generating paid accounts, but that for this irreducible population (using existing processes), the payment outcomes are declining (as dollar balances increase). When a utility has a steady or declining percentage of accounts in older arrears with an increasing percentage of unpaid balance dollars, that means that there is a population of unpaid accounts that are not effectively being reached by existing processes.”³⁵
- “[I]t is noticeable that while the percentage of aged accounts being paid from month to month is staying relatively constant (or slightly improving), the percentage of dollars older than 90-days that are collected shows a distinct, substantive decline in the past three years. This data is further support for the conclusions, drawn from prior charts as well, that a relatively constant nonpayment population is owing BC Hydro more and more money.”³⁶
- “While BC Hydro is increasing the effort it is devoting to its collections, whether measured by the number of disconnect notices (DNPNS) it issues or measured by the actual number of disconnections for nonpayment (DNPs), its increased efforts generates less and less impact. This chart is limited to the disconnect notices. It distinctly shows the increased effort that BC Hydro is devoting for each paid account that the Company realizes...The inclining slope (declining efficiency) indicating that each paid account requires a greater and greater number of DNPNS reveals that neither of these two results is occurring.”³⁷
- “The same result appertains when one examines the level of effort to generate each \$1,000 in payments, rather than examining the number of accounts being paid. Looking at dollars paid (rather than at accounts paid) is important because one can see an improvement whether or not the increased payments yield a \$0 balance...While BC Hydro is increasing its level of effort (as measured by the number of disconnect notices rendered for each \$1,000 billed), the increased effort does not bear corresponding output, since the effort per each \$1,000 paid is increasing sharply.”³⁸

³⁵ Exhibit C2-19, BCOAPO Response to BCUC 12.2, Attachment 1, p. 8.

³⁶ *Ibid.*, p. 10.

³⁷ *Ibid.*, p. 14.

³⁸ *Ibid.*, p. 15.

- “The efficiency of collection efforts can be examined not only in terms of the resources devoted per unit of output, but by the flipside as well, the output received per unit of resource devoted. .Since BC Hydro needs to engage in more collection activity for each paid account it generates, as well as each \$1,000 in payments received, it follows that the number of accounts paid, and the number of dollars paid, per each disconnect notice issued is declining. That, in fact, is the case.”³⁹
- “The effectiveness of collection devices can be measured not simply by the dollars (or number of accounts) paid, but by the extent to which customers in arrears take positive steps to retire their arrears. The alternative to completely paying an outstanding account balance, of course, is to contact the Company to enter into a deferred payment arrangement (DPA) (sometimes known as a deferred payment agreement). During the time that BC Hydro has engaged in noticeably more collection efforts (both per accounts and dollars of total arrears and per accounts and dollars of older arrears), the ratio of DPAs to accounts more than 60-days in arrears has remained virtually constant. The increased collection effort, in other words, has not had the impact of bringing more accounts in arrears, bringing accounts with higher levels of dollars of arrears, or bringing a higher aggregate level of arrears, into contact with the Company to enter into agreements to retire those arrears over time.”⁴⁰

As noted by Mr. Colton in his Opening Statement at the oral hearing: “[W]e don't have to find that the utility is doing a bad job now in order to find, as I point out in my testimony, that the utility can do a better job and improve the complete, regular, timely and unsolicited payment of bills from low-income customers...”⁴¹

Contrary to the CEC’s argument, BCOAPO submits that the evidence supports that a bill discount such as ESUB will help BC Hydro improve the efficiency of its bill collections. The evidence clearly shows that there is room for improvement in that regard.

ESUB will contribute to that improvement in the efficiency of generating complete, timely, regular and unsolicited bill payments by low income customers. In response to BC Hydro IR 19.2 to BCOAPO, at Attachment 1, BCOAPO provided some key evidence in support. See, in particular, the tables at pages 6, 7, 9 and 11.

ESUB will improve the timely payment of bills and result in fewer arrears. BCOAPO has provided data⁴² that demonstrates that on one end of the spectrum, a low income program such as ESUB resulted in 20% of program participants having arrears in no

³⁹ *Ibid.*, p. 17.

⁴⁰ *Ibid.*, p. 19.

⁴¹ Transcript Volume 7, p. 1240, line 26; 1241, lines 1-4. While Mr. Colton was talking about the proposed low income terms and conditions when he made this statement, he was talking more broadly about improving the complete, timely, regular and unsolicited payment of bills.

⁴² Exhibit C2-17, BCOAPO Response to BC Hydro 19.2, Attachment 1, p. 7

months, while only 1% to 4% of program non-participants had arrears in no months. On the other end of the spectrum, the data BCOAPO provided revealed that only 11% of program participants had arrears in 19 or more of the 24 months of the program, while nearly 60% of the low-income program nonparticipant did.

ESUB will also allow BC Hydro to collect its bills with less effort that it is currently exerting in the collection process. The evidence BCOAPO provided⁴³ shows that the longer a customer participated in the bill affordability program, the less the utility had to work (in terms of the number of collection activities per 1,000 payments the utility received). While program participants received between 0.2 and 0.4 disconnect notices (DNPNS: Disconnect Nonpayment Notices) for each 1,000 payments made, program nonparticipants received between 0.8 and 1.2 disconnect notices for each 1,000 payment payments.

Further, ESUB will help improve BC Hydro's ability to collect its entire bill from program participants. BCOAPO provided data⁴⁴ showing that while between 82.5% and 92% of customers with more affordable bills paid 100% or more of their bills each month, only 57.4% to 65.6% with less affordable bills did. While 97.3% (92.0% + 5.3%) of low-income customers with more affordable bills paid 90% or more of their bills each month, only 73.5% (16.1% + 57.4%) of customers did.

CEC's argument that this information was "effectively countered" by BC Hydro should be rejected; BC Hydro never challenged this data, let alone rebutted it.⁴⁵

At paragraphs 45 – 56 of its October 11th Final Argument, BC Hydro argues that that the ESUB cannot be justified because any "reduced collection costs" would not be sufficient to cover the lost revenue. BC Hydro states that "there are no quantifiable net benefits to any of Mr. Colton's low-income proposals"⁴⁶, and that it had no obligation to review any of the reports that BCOAPO identified as supporting the benefits it says would flow from

⁴³ Exhibit C2-17, BCOAPO Response to BC Hydro 19.2, Attachment 1, p. 9.

⁴⁴ Exhibit C2-17, BCOAPO Response to BC Hydro 19.2, Attachment 1, p.11.

⁴⁵ At paragraph 57 of its October 11th Argument, BC Hydro attempts to discredit the conclusion that low income payments improve by citing data from Ontario that it presented on the last day of hearing. For example, BC Hydro argues that low income arrears and low income bad debt have both increased from 2013 through 2015. What BC Hydro fails to mention is that Ontario utilities use the enrollment of customers in its crisis program (called "EFA") and its bill affordability program (called "OESP") in 2015. As BCOAPO's undertaking explained to BC Hydro, which it simply chose not to include in its Argument, is that "According to the Ontario Energy Board, OESP, alone, averaged 4,000 to 10,000 applications a week after it began." When the number of low income customers is increasing by an average of 4,000 to 10,000 applications a week in 2015, in other words, it should come as no surprise (when properly explained) that the amount of arrearages (or bad debt) associated with low income customers has increased as well. Moreover, as explained to BC Hydro in BCOAPO's undertaking, but which BC Hydro chose not to include in its Argument about increasing low income arrearages, "the Emergency Financial Assistance (EFA) program substantially changed its eligibility criteria beginning in 2015. Prior to 2015, EFA eligibility was set at LICO-plus 15%. Beginning in 2015, EFA eligibility was set at LIM." Given that the number of customers classified as "low income" using LIM is much greater than the number classified as low income using LICO-plus 15%, it is thus no surprise that the amount of "low-income" arrears (or bad debt) increased along with the increased number of customers defined to be "low-income."

⁴⁶ BC Hydro October 11th Argument, para. 45.

the ESUB, despite that Mr. Colton specifically relied on these reports to support his conclusions.⁴⁷

BC Hydro argues that neither BCOAPO nor Mr. Colton provided any reason to believe that any of the 77 evaluations had any applicability to this proceeding. BC Hydro advances this argument despite Mr. Colton's testimony where he states:

"I provided a list of third party evaluations where someone -- when a utility implemented a low income program, someone other than the utility evaluated that program on an after-the fact basis. And I've both done those evaluations and have been consulted on evaluations done by others, and I've read every -- not merely read but studied every one of those evaluations."⁴⁸

BCOAPO clearly documented the benefits that will flow to BC Hydro. In addition to the net benefits found in Indiana, as described below, in a response to an information request from BC Hydro itself, BCOAPO demonstrated⁴⁹ that bill affordability resulted in net benefits to the Colorado utility adopting such a program.⁵⁰

When the increased completeness and timeliness of payments are taken into account, without seeking to dollarize the reduced costs of service or other benefits from the improved affordability, the Colorado utility collected more money, in a more timely fashion, with less collection effort, when the affordability of the payments were considered. Stated conversely, as shown in the Table below, low-income customers for whom affordability was not taken into account, at all levels of arrears, would have paid less money than customers for whom payment affordability was taken into account. Any reduction in expenses –be they bad debt, or working capital, or credit and collection expenses—and any ancillary benefits (such as redirecting collection processes toward customers who can pay)—are additional benefits.⁵¹ (emphasis added)

While BC Hydro opposes ESUB on the basis that any reduction in collection costs would be insufficient to cover the lost revenue resulting from the program, BCOAPO notes that BC Hydro is responding to an argument that BCOAPO never made. It is inappropriate to review ESUB on this basis.

⁴⁷ Exhibit C2-12, Direct Testimony of Roger Colton, p. 18 (PDF p. 23). BC Hydro's assertion, without citation or authority, that the reports are "hearsay" can be rejected as expert witnesses may rely on reports and documents prepared by others in formulating and presenting their conclusions without needing to produce the originating author for cross-examination.

⁴⁸ Transcript Volume 7, p. 1285, lines 19-26.

⁴⁹ Exhibit C2-17, BC Hydro 19.2, Attachment 1.

⁵⁰ Not only was the Colorado report referenced and footnoted, a copy was provided to all parties. Exhibit C2-19, BCOAPO Response to BCUC 12.2 (see the third and fourth documents cited as links in that IR response).

⁵¹ Exhibit C2-17, BC Hydro 19.2, Attachment 1, pp. 9-10.

ESUB Will Improve the Cost Reflectivity of BC Hydro's Residential Rates.

CEC and BC Hydro both assert that low-use customers are not necessarily lower cost customers to serve.⁵² BC Hydro submits that its rebuttal testimony supports the conclusion that the load curves for low income customers and residential customers are substantially the same shape.⁵³

BCOAPO submits that BC Hydro's rebuttal evidence actually supports Mr. Colton's analysis and his conclusions. The load shapes of low income customers and non-low income customers are not substantially the same shape as BC Hydro suggests - a comparison of Figure 1-1 and Figure 1-2 from BC Hydro's rebuttal evidence shows that⁵⁴:

- The low income peak demand at median usage is more than 30% lower than non-low income peak demand (roughly 1.3 vs. 1.9 in December 2004).
- For low income customers, the period of increased low-income demand relative to base load (i.e., ongoing) demand is shorter than the period of increased demand for non-low-income customers.
- The low income cold weather peak is flatter relative to the non-cold weather months than the non-low income peak is to the non-low income non-cold weather months.

BCOAPO submits that all Figure 1-1 and Figure 1-2 demonstrate is that the other data previously provided by BC Hydro showing that low-income customers are lower cost to serve is also correct. In the Application, for example, BC Hydro states that "low load factors are indicative of customers that are more costly to serve..."⁵⁵ The flipside of that statement, of course, is that higher load factor customers are less costly to serve.

As BCOAPO has previously described,⁵⁶ BC Hydro provided an analysis of load factors at System Peak (4CP)⁵⁷ and load factors at Class Peak (NCP)⁵⁸ in response to information requests. Load Factors were sharply higher, for both System Peak (4CP) and Class Peak (NCP) for customers with annual usage at or below roughly 7,500 kWh per year. Indeed, customers with annual usage below roughly 3,750 kWh had a 4CP Load Factor of 80%,⁵⁹ while having an NCP Load Factor of above 90%.⁶⁰ Indeed,

⁵² BC Hydro October 11th Argument, para. 24; CEC Final Argument, para. 230.

⁵³ BC Hydro October 11th Argument, para. 27.

⁵⁴ Exhibit B-31, Attachment 1, p. 1 (PDF p. 41).

⁵⁵ Exhibit B-1, p. 4-8.

⁵⁶ See, for example, BCOAPO's September 26th Final Argument, at section 6.1.3.1.

⁵⁷ Exhibit B-5, BCOAPO 1.49.1.1.

⁵⁸ Exhibit B-5, BCOAPO 1.49.1.2.

⁵⁹ Exhibit B-5, BCOAPO 1.49.1.1.

⁶⁰ Exhibit B-5, BCOAPO 1.49.1.2.

customers with annual usage below 2,500 kWh had a 4CP Load Factor of more than 75%⁶¹ while having an NCP Load Factor exceeding 85%.⁶²

Similarly, customers with annual usage of between 2,500 and 5,000 kWh had an average 4CP Load Factor of between 65% and 75%⁶³ and an NCP Load Factor of between 72% and 85%.⁶⁴ Overall, the sharply increasing load factor begins at an annual consumption of roughly 6,200 kWh for both the 4CP and the NCP peaks.

Looking at load factors by usage level is a necessary step in looking at the overpayment of low-income customers relative to the costs they impose on the system. BC Hydro was specifically asked for a load curve for⁶⁵:

- Low-income customers for a complete 12-month period;
- Low-use customers who are also low-income; and
- Low-use customers, whether or not such customers were low-income.

BC Hydro replied that it “does not have the income level of customers in the database, and is unable to provide” load curves by income. BC Hydro further replied that it “does not label residential customers by their usage level in the billing system, and is unable to provide” load curves by usage level.⁶⁶

BC Hydro was further asked to provide “a copy of any study memo, evaluation or analysis of any nature” that considers “the difference in the load curve for residential customers depending on” the monthly kWh customer consumption; the annual kWh consumption, or the income of the customer.⁶⁷ BC Hydro responded that “BC Hydro has not done any comprehensive study of residential load curves based on monthly or annual consumption.” BC Hydro further responded that “BC Hydro has not done any study with respect to customer income and residential load curves.”⁶⁸

BC Hydro did offer an unqualified “confirmed” when it was asked to “confirm or deny whether higher residential usage is associated with higher contributions to peak demand on BC Hydro’s system.”⁶⁹ However, BC Hydro said that it was, due to a lack of data, unable to “provide separate monthly usage distribution curves for low-income customers...and non-low-income customers for residential customers irrespective of income if non-low-income is unavailable.”⁷⁰

⁶¹ Exhibit B-5, BCOAPO 1.49.1.1.

⁶² Exhibit B-5, BCOAPO 1.49.1.2.

⁶³ Exhibit B-5, BCOAPO 1.49.1.1.

⁶⁴ Exhibit B-5, BCOAPO 1.49.1.2.

⁶⁵ Exhibit B-5, BCOAPO 1.70.1.

⁶⁶ Exhibit B-5, BCOAPO 1.70.1(c),(d),(e).

⁶⁷ Exhibit B-5, BCOAPO 1.72.1.

⁶⁸ Exhibit B-5, BCOAPO 1.72.1.

⁶⁹ Exhibit B-5, BCOAPO 1.81.1.

⁷⁰ Exhibit B-5, BCOAPO 1.86.1.

BCOAPO discussed in detail in our September 26th Final Argument how, based on BC Hydro's own data, it is clear that substantially more low income customers fall into the very high Load Factors and substantially fewer low income customers fall into the very low Load Factors.⁷¹ According to BC Hydro's own statements, "low load factors are indicative of customers that are more costly to serve."⁷²

At paragraph 26 of its October 11th Argument, BC Hydro seeks to introduce a new argument not presented in any written document and not supported by any empirical analysis or data—namely, BC Hydro argues that small consumption customers currently pay about 71 or 72 percent of their demand and customer related costs, and that with ESUB they would pay only about 43 to 46 percent of their demand and customer-related costs. BCOAPO submits that this reasoning is circular, and the argument should be rejected.

BCOAPO submits that BC Hydro's argument simply assumes a variety of facts that are in dispute. It assumes that the cost of serving low-use customers is the same as the cost of serving non-low-use customers (and, as a result, a reduction in rates would reduce the proportion of costs paid). BCOAPO, however, has documented (through BC Hydro's own data) that the cost per kWh of consumption decreases as usage decreases. For example:

- BC Hydro allocates \$646.7 million of its \$1,060.5 million of residential demand costs (61%) based on the 4CP allocator. Customers with consumption of 5,000 kWh or less have a 4CP load factor of between 65% and 85% while customers with 10,000 kWh have a load factor of less than 60%.⁷³ The lower use customers, in other words, have more usage per kW of peak demand over which to spread their costs. Nonetheless, the low use customer is charged the same rate as the higher use customer.
- BC Hydro allocates \$367.1 of its \$1,060.5 of residential demand costs (35%) based on the NCP allocator. Customers with consumption of 5,000 kWh or less have an NCP load factor of between 72% and 90%, while customers with consumption of 10,000 kWh have an NCP load factor of 65%. Again, the lower use customers spread costs over more usage per kW of peak demand. Nonetheless, the low use customer is charged the same rate as the higher use customer.

BC Hydro argues that reducing the rate would reduce the proportion of total demand costs paid by the low use customers and that such a reduction would be inappropriate. The argument, however, assumes that the demand cost recovery per kWh of consumption is the same for both low use and high use residential customers. BCOAPO has already demonstrated that this is in error.

⁷¹ BCOAPO Final Argument dated September 26, 2016, pp. 54-58.

⁷² Exhibit B-1, p. 4-8.

⁷³ Exhibit B-5, BCOAPO 1.49.1.

BC Hydro further assumes that the Step 1 rate is cost-based in the first instance, an assumption that is simply not accurate. Step 1 rates are not designed to recover a fixed percentage of the “demand and customer” costs from residential customers. The residential customer charge was set simply at the 2008 basic charge increased by the rate of inflation. The Step 1 rate was residually set (after setting the customer charge and the Step 2 rate) to achieve revenue neutrality.⁷⁴ Moreover, not even the Step 2 rate reflects the difference in costs between low-use and high use customers. BC Hydro acknowledges that its calculation of Long Run Marginal Cost (LRMC) is based on the cost of meeting an increment of demand.⁷⁵ Despite the fact that higher use customers (by virtue of having a lower load factor⁷⁶) impose a higher “increment of demand” on the system per kWh than do lower use customers, the rates charged to both higher use customers are the same as the rates charged to lower use customers. Some portion of the rates charged to lower use customers, in other words, are used to pay for the “increment of demand” imposed on the system by the higher use customers.

Finally, even if one accepts BC Hydro’s calculations simply for the sake of argument, BC Hydro has indicated previously that the proportion of customer charges collected in a particular rate component is subservient to “rate impacts.” BC Hydro stated in response to information requests, for example, that

BC Hydro reviewed that an increase in the Basic Charge to 100 percent recovery of customer-related costs would improve fairness in aligning cost recovery with cost causation but would impose high bill impacts on typical customers, including low income. BC Hydro notes that organizations representing segments of its Residential class (BCSEA, BCOAPO) opposed an increase to the RIB rate basic charge. Commission staff observed that such an increase would adversely affect low income customers.”⁷⁷

BCOAPO submits that this proceeding has not conclusively established the place to recover all demand costs. The Commission should note, for example, that it is not “a given” that it is generally-accepted that the capacity costs included in Step 1 rates are entirely appropriate, rather than having some demand-related costs instead included in Step 2. Commission staff specifically asked BC Hydro, for example: “Notwithstanding the Commission’s previous findings on the issue, and the fact that the RIB Step 2 rate is generally referred to as the Step 2 energy rate, does naming the rate an “energy rate” or an “energy conservation rate” reflect an overly precise view of the rate, given the anticipated capacity savings, and if so should a capacity value be included in the LRMC? If not, why not?” BC Hydro responded in relevant part:

⁷⁴ Exhibit B-5, BCOAPO 1.58.1.

⁷⁵ Exhibit B-5, BCOAPO 1.19.1.

⁷⁶ See the preceding paragraphs which documented the lower load factor for higher use customers, measured using demand based on either 4CP or NCP demand, the two demand measures used in BC Hydro’s Cost of Service methodology.

⁷⁷ Exhibit B-5, FortisBC 1.7.1.

In BC Hydro's review, reference in RS 1101/RS 1121 (the RIB rate) Step 2 rates as the 'Energy Charge', or the general naming of the RIB Step 2 rate as an 'energy rate' simply reflects that it is a charge for energy consumed. The naming does not necessarily reflect the costs to be recovered through the charge and as such it is not an overly precise view of the rate. The decision to include some amount of generation capacity costs in the calculation of the LRMC is not dependent on how the RIB Step 2 rate is named or referenced. BC Hydro believes that the RIB rate is designed to produce energy conservation.

While BC Hydro expects the RIB rate to result in capacity savings, those capacity savings are a byproduct of the customer energy reductions. The RIB Step 2 rate does not have a peak period component to directly incent peak demand reductions. As such, BC Hydro continues to propose that the LRMC estimate of the incremental costs of energy as the benchmark for the RIB Step 2 rate.⁷⁸

Given that the proportion of demand costs included in the Step 1 rate, in the very first instance, is somewhat arbitrary, the Commission should not accept BC Hydro's calculation of a lower proportion of demand costs being paid by low-use customers through ESUB as the basis for rejecting ESUB.

To summarize, even if BC Hydro's unsupported calculations are correct (which BCOAPO not accept), the calculation is not a basis to reject ESUB.

ESUB Will Improve the Affordability of BC Hydro's Rates.

At paragraphs 172 – 177 of its Final Argument, the CEC questions whether the proposed ESUB would address the affordability of BC Hydro electric rates. CEC asserts that not only will ESUB "fail to address the root cause of the issue, but the CEC submits that the proposal may not make a significant enough impact on the poor's ability to have a reasonable and safe standard of living." In response to paragraphs 175-177, BCOAPO submits that CEC's argument that bill affordability programs will not address the root cause of poverty, and that incomes are simply too low is a red herring. There is no question that income is too low for customers with household incomes below LICO. At issue in the 2015 RDA proceeding is about what can be done within the parameters of the Commission's jurisdiction – the Commission cannot increase income assistance or minimum wage, but it can and should order bill affordability programs for low income customers.

BCOAPO produced substantial evidence that the ESUB will improve the affordability of BC Hydro rates. As Mr. Colton noted, the ESUB "provides meaningful assistance to low-income customers without imposing unreasonable burdens on residential

⁷⁸ Exhibit B-5, BCUC 1.13.1.

customers not taking service under the Essential Services usage block.”⁷⁹ Mr. Colton noted that “the proposed rate for an Essential Services usage block helps to protect low-income households [from future rate increases], but does not completely hold such customers harmless...[ESUB] will mitigate, but not completely protect, low-income customers against rate increases for the next three years.”⁸⁰

BCOAPO demonstrated that the ESUB “would provide a bill reduction of between \$9 and \$16 per month on low-use, low-income bills.”⁸¹ The annual bill reduction would thus be \$108 and \$192 per year, “depending on consumption, as disaggregated based on the housing type, heating fuel and location factors.”⁸² Customers with higher bills will receive higher discounts (up to the ESUB maximum). Mr. Colton further noted that a discount such as ESUB is necessary since even energy efficiency targeted to low-income customers will not adequately address affordability issues.⁸³

BCOAPO submits that the CEC’s opposition is not based on any inadequacy of the evidentiary support for ESUB, but rather upon CEC’s ideological belief that low income customers should not receive consideration in utility rate-setting irrespective of any factual demonstration. At paragraph 178 of its Final Argument, CEC argues simply its belief that “the appropriate responsibility resides with the provincial government and not with BC Hydro as the electric utility.” CEC does not address why it should be the responsibility of the provincial government to pay for BC Hydro to improve the efficiency and effectiveness of BC Hydro’s collection responses.

BCOAPO notes that Mr. Colton explained how and why this would occur. As he indicated, there is a “well-accepted mechanism for determining the cost effectiveness of collection techniques” called “net back.”⁸⁴ Mr. Colton stated that the mechanism, when applied to programs such as ESUB, demonstrates the net financial benefit to the utility.⁸⁵ Further, he stated the following: “Net back says -- it starts with the billed amount and you multiply your collection percentage, and then you subtract your credit and collection costs and then you add your reduced bad debt and working capital.”⁸⁶

BCOAPO demonstrated that a positive net back is not merely “possible,” but is in fact likely to occur. When the Commission staff asked about cost-effectiveness of credit and collections, for example, BCOAPO provided a copy of an Indiana low income program evaluation. That Indiana evaluation reported that: “while [program] participants were billed 90% of what nonparticipants were billed, they paid 111% what nonparticipants

⁷⁹ Exhibit C2-18, BCOAPO Response to BCSEA 3.6; see also, Exhibit C2-12, Direct Testimony of Roger Colton, p. 19 (PDF p. 24).

⁸⁰ Exhibit C2-12, Direct Testimony of Roger Colton, p. 19 (PDF p. 24).

⁸¹ Exhibit C2-12, Direct Testimony of Roger Colton, p. 19 (PDF p. 24) (emphasis added).

⁸² Exhibit C2-12, Direct Testimony of Roger Colton, p. 19 (PDF p. 24).

⁸³ Exhibit C2-12, Direct Testimony of Roger Colton, p. 21 (PDF p. 26).

⁸⁴ Transcript Volume 7, p. 1368, lines 20-23.

⁸⁵ Transcript Volume 7, p. 1368, lines 15-20.

⁸⁶ Transcript Volume 7, p. 1368, lines 15-20.

paid.”⁸⁷ In that evaluation of 500 program participants, while the billings to program participants decreased, program participants made nearly \$50,000 more in actual payments.⁸⁸

Further, it is not likely that the government would distribute money to low income customers with the objective of helping BC Hydro to improve the efficiency of the utility’s operation. Instead, as Mr. Colton stated, social service programs don’t care whether they improve the efficiency of the utility operation...our program is designed to take that utility operating impact into account.”⁸⁹

Under CEC’s approach, any distribution of benefits by the government would accomplish no objective in which BC Hydro (or the Commission) would take an interest.

3.5. Arguments Relating to the Cost of ESUB Do Not Merit Rejection of ESUB

The proposed ESUB is reasonably priced and does not put an unreasonable burden on the residential customers who will pay for it. The total ESUB benefits will cost \$26.9 million at a 100% take-up rate.⁹⁰ The actual take-up rate will be closer to 50%.⁹¹ The total cost to be included in rates would thus be \$13.450 million.⁹²

At paragraph 72 of its October 11th Final Argument, BC Hydro suggests that the take-up rate for ESUB would be closer to 100%.⁹³ It relies on the participation in California’s low income discount as the basis for its estimate.⁹⁴ BC Hydro offers no evidence or argument that the California program was similar to ESUB or that the circumstances facing California were applicable to BC Hydro or to ESUB.

BCOAPO notes that the reports Mr. Colton references include “the most comprehensive review of income-linked energy cost relief programs.” This study “was undertaken in the ‘Multi-State Study’ of ratepayer-funded energy assistance programs in the United States” and had an entire section devoted to the California program.⁹⁵ Had BC Hydro familiarized itself with the California program, it would be aware that one reason that California enrollment rates are high is because the state allows for self-certification for program participation; a household merely needs to declare its income, rather than

⁸⁷ Exhibit C2-19, BCUC IR 12.2. See the fifth document cited in that IR response: Roger Colton, An Outcome Evaluation of Indiana’s Low-Income Rate Affordability Programs, online: Fisher, Sheehan & Colton Public Finance & General Economics <http://www.fsconline.com/downloads/Papers/2007%20IN%20IN%20Outcome%20Evaluation-final.pdf> at page 7.

⁸⁸ *Ibid.*

⁸⁹ For the full quote – see BCOAPO’s September 26th Final Argument at footnote 210 and Transcript Volume 7, p. 1253, lines 13-26; p. 1254, lines 1-5.

⁹⁰ Exhibit C2-12, Direct Testimony of Roger Colton, pp. 23 & 31 (PDF pp. 28 & 36).

⁹¹ Exhibit C2-12, Direct Testimony of Roger Colton, p. 32 (PDF p. 37).

⁹² Exhibit C2-18, BCOAPO Response to BCSEA 9.5.

⁹³ BC Hydro October 11th Argument, p. 28, footnote 100.

⁹⁴ BC Hydro October 11th Argument, p. 28, footnote 100, citing Transcript Volume 7, p. 1384, lines 1-6 & p. 1386, lines 10-15.

⁹⁵ Exhibit C2-21, BCOAPO Response to MoveUp 3.1.

going through an application process that involves a certification of income.⁹⁶ Moreover, for a substantial portion of the California program participants, re-certification is not performed annually (or even every two years), but rather every *four* years.⁹⁷ In contrast, the ESUB proposal requires an application and independent third-party verification of income eligibility. ESUB also requires an annual verification of eligibility.⁹⁸

Arguments that BC Hydro should expect a 100% participation rate are unreasonable and should be rejected. As Mr. Colton explained:

...whenever program applications are required, the application process will serve as a barrier to participation.⁹⁹ The take-up rate will thus be less than 100%. Some people will find the application process to be a barrier to participation. Some people who might be income-qualified will choose not to participate because they do not see themselves as needing assistance. Some people will not realize that they qualify. Some people will not “trust” the Company. Some people will not want to fulfill other qualifications required to receive assistance (e.g., should BC Hydro require budget billing). When fully ramped up, I would expect a participation rate of roughly 50% of the total income-eligible population.¹⁰⁰

BC Hydro and CEC both argue that in addition to the bill reductions delivered through ESUB, there will be an additional administrative cost. Mr. Colton estimated that administrative cost to be 10% of the program benefits.¹⁰¹ In fact, BC Hydro has indicated that it could administer ESUB at an annual cost of only \$550,000, well below the 10% administrative cap that Mr. Colton has found to be reasonable in other circumstances. BCOAPO submits that ESUB does not pose a particular administrative cost burden.

Similarly, BCOAPO submits that the start-up costs for ESUB are not unreasonable. BC Hydro estimates that start-up costs for ESUB would reach \$1.25 million.¹⁰² BCOAPO does not dispute that there may well be start-up costs. BCOAPO simply indicates that those costs will not add an incremental burden to ratepayers. Instead, during the first year of ESUB, before ESUB is fully enrolled, the start-up costs can be paid from the

⁹⁶ BCOAPO Response to MoveUp IR 3.1. See the state-specific appendix for California provided at that IR response, at p. 15 (“Customers are allowed to self-certify for the program”).

⁹⁷ Exhibit C2-21, BCOAPO Response to MoveUp 3.1. See the state-specific appendix for California provided at that IR response, at p. 13 (“[T]he companies have extended the certification period for fixed income customers from two years to four years ‘because customers on fixed incomes tend to remain in related programs for long periods. PG&E expects this policy change to mitigate the current high numbers of fixed income CARE customers that do not respond to a request for recertification and are dropped from the program’”).

⁹⁸ Exhibit C2-21, BCOAPO Response to MoveUp 2.5 & 2.5.2.

⁹⁹ BC Hydro could not offer insights into why customers in need do not contact BC Hydro (Exhibit B-23, BCOAPO 2.306.1).

¹⁰⁰ Exhibit C2-12, Direct Testimony of Roger Colton, p. 32, lines 4-12 (PDF p. 37).

¹⁰¹ Transcript Volume 7, p. 1280, lines 17-19.

¹⁰² Exhibit B-31, BC Hydro Rebuttal Evidence, p. 5.

benefits not distributed. This was more fully explained by Mr. Colton at Transcript Volume 7, p. 1309, lines 17-26; 1310, lines 1-9.¹⁰³

In sum, BCOAPO acknowledges that BC Hydro will have start-up costs for ESUB. Even if those start-up costs reach \$1.25 million as estimated by BC Hydro, that \$1.25 million will be paid out of the first year of benefits. The start-up costs do not increase total program costs above \$13.450 million in Year 1.

In further response, BC Hydro offers testimony indicating that the start-up costs of the Ontario low income program were \$13.2 million and the annual operating costs were \$9 million.¹⁰⁴ These figures have no applicability to ESUB or to BC Hydro. BC Hydro offers its own estimates that start-up costs will be \$1.25 million and annual operating costs will be \$0.55 million.¹⁰⁵ Moreover, BC Hydro witnesses, on cross-examination, acknowledged that the start-up and ongoing administrative costs in Ontario were spread over between 70 and 80 utilities.¹⁰⁶ The Ontario figure does not represent a per-utility figure.

At paragraph 229, the CEC argues that ESUB should be rejected because some costs of ESUB will be allocated to non-residential customers. CEC cites BC Hydro for the proposition that “based on current allocation methods, incremental implementation and ongoing administration costs would be spread across all customer classes.”¹⁰⁷ When asked why ESUB costs would not be directly assigned to the residential class rather than allocated between classes, BC Hydro’s witness explained his rebuttal testimony as follows: “I believe we don’t assign our information and technology costs at that level of granularity. There may be some duplication of the --there may be some cross-system work I am not sure, but from our methodology there would be some cost.”¹⁰⁸ BCOAPO understands that it may have been incorrect in its initial assertion that there would be no costs to other customer classes. The failure to directly assign information technology costs to the residential class should the Commission approve ESUB is identical to the failure to directly assign such costs when changes are made to LGS and MGS rates (and other rates). It goes both ways. So, for example, should the Commission make changes to the LGS and MGS rates as part of the 2015 RDA, residential customers will pay part of those costs, just as they paid part of the costs of implementing those complex rate structures when they were set up.

The above-noted cross-examination of BC Hydro’s witness demonstrated is that out of the \$0.55 million ongoing operating costs, BC Hydro would take some portion attributable to information and technology (e.g., eliminating staff costs). Of that portion, there “may be some cross-system” work. And, because that dollar amount is so small

¹⁰³ See also BCOAPO September 26th Argument at section 6.1.2.2.

¹⁰⁴ Exhibit B-31, BC Hydro Rebuttal Evidence, p. 12.

¹⁰⁵ Exhibit B-31, BC Hydro Rebuttal Evidence, p. 2.

¹⁰⁶ Transcript Volume 7, p. 1390, lines 14-26; p. 1391, lines 1-8.

¹⁰⁷ Exhibit B-31, BC Hydro Rebuttal Evidence, p. 13.

¹⁰⁸ Transcript Volume 7, p. 1392, lines 17-21.

(“level of granularity”), those costs are not directly assigned. BCOAPO submits that that process is an inadequate reason to reject ESUB.

Finally, BC Hydro argues that ESUB should be rejected because

“even if BC Hydro were to accept the proposition that on-time payments would be reduced for low income customers under the ESUB rate, the rate increase of 1.5 to 3 per cent would also impact arrears for customers that are not low income, leading to increased bad debts and borrowings from delayed revenues for those customers.¹⁰⁹

This argument is at odds with paragraph 42 of BC Hydro’s October 11th Argument which states:

Attachment 1, IR 1.192.1 shows clearly that both bad debt (in dollars) and active residential accounts receivable greater than 60 days (also in dollars) were the same in Fiscal 2016 as they were in Fiscal 2011 despite annual average rate increases in each year and despite an increase in the number of customer accounts over that period.

Moreover, BC Hydro’s reference to a “rate increase of 1.5 to 3 per cent” assumes a 100% take-up rate. BCOAPO has set out in detail above the reasons why that assumption should be rejected. Any rate increase resulting from ESUB will be less than 1%. There is simply no basis on which to conclude that such a rate increase to non-low-income customers would result in any increase in bad debt or delayed revenues.

3.6. Arguments Not Relating to the Foundations of ESUB Do Not Merit Rejection of ESUB

At paragraph 39 of its October 11th Argument, BC Hydro raises a red herring argument in opposition to ESUB when it states that ESUB “is premised on BC Hydro being able to identify its low-income customers...[and that] BC Hydro does not have that information.” BCOAPO has made clear that it would not be BC Hydro’s obligation, or even its role, to identify its low income customers for purposes of either ESUB or for BCOAPO’s proposed low-income Terms and Conditions. Instead, BCOAPO has recommended that there be an information transfer between MSDSI and BC Hydro, as already occurs, to allow for identification of such customers. The process was clearly stated in response to an information request from Commission Staff:

The “three-stage process,” as described in Mr. Colton’s testimony, involves allowing progressively more ways for low income customers to enroll in an Essential Services Usage Block. The process Mr. Colton recommends relies on a third party administrator who is already skilled in, and perhaps already engaged in, the process of intake and income verification to perform such verifications for the Essential Services Usage

¹⁰⁹ Exhibit B-31, BC Hydro Rebuttal Evidence, p. 6.

Block; the primary alternative would be to have BC Hydro conduct the process of intake and income verification in-house. While stakeholders might wish to “review” such an intake and income verification process before implementing an Essential Services Usage Block, BCOAPO understands that BC Hydro does not seek to perform such intake and income verification tasks, and in any event, BCOAPO does not recommend such an approach.¹¹⁰

In reply to paragraphs 49 – 52 of BC Hydro’s October 11th Argument, it is unreasonable for BC Hydro to suggest that MSDSI would not do everything it could to verify its clients’ income so that they might be eligible for low income programs through BC Hydro. BCOAPO is unaware of any evidence that MSDSI would not take steps to assist should the Commission direct BC Hydro to implement low income programs.

MSDSI is continuously amending its laws, policies and procedures, on its own initiative and in response to legal action and community advocacy. For recent examples, see the “What’s New” section of the BC Employment & Assistance Policy & Procedure Manual¹¹¹. Lawyers with the BC Public Interest Advocacy Centre have a long history of working with MSDSI to change laws, policies and procedures. BC Hydro has presented no evidence that MSDSI will not cooperate with BC Hydro to find ways to implement BCOAPO’s proposals should the Commission order BC Hydro to implement them.

In response to paragraphs 65 and 66 of BC Hydro’s October 11th Argument, BCOAPO certainly agrees that there is inadequate support for low income people who are having difficulty paying for their residential electricity. However, bill affordability programs offered through BC Hydro and improvements to MSDSI assistance are not mutually exclusive concepts. As set out in our October 11, 2016 submissions at page 38, Ontario and Manitoba both have provincial social assistance programs, and this has not prevented either jurisdiction from finding that the Ontario Energy Board and Public Utilities Boards have jurisdiction to order programs targeted at low income ratepayers. Moreover, the limited and highly discretionary supports that may be available in certain circumstances through MSDSI are only available to people receiving income assistance or disability assistance through MSDSI. As Mr. Klein’s evidence clearly establishes, it is a common misconception that all low income people receive social assistance; in fact, the “working poor” make up a significant percentage of people below with incomes below LICO. There are no or limited funds dedicated to assist the “working poor” with bill affordability issues. BC Hydro is in a position to address bill affordability issues in a manner that can also improve cost reflectivity for low income customers and improve BC Hydro’s efficiency of operations. BCOAPO has demonstrated that electricity has become increasingly unaffordable for those with very low incomes, and is urging the Commission to exercise its jurisdiction to address the issue.

¹¹⁰ BCOAPO Response to BCUC IR 8.1.

¹¹¹ <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual>.

Finally, at paragraph 74 of its October 11th Argument, with regard to BCOAPO's proposal in the alternative that if the Commission requires further information from BC Hydro regarding the ESUB, that it should direct BC Hydro to file a proposed rate discount for low income customers, BC Hydro argues that "it would not be appropriate for the Commission to decline to approve the requested ESUB on the basis of insufficient information and then direct BC Hydro to make a substantially similar proposal." BCOAPO submits that BC Hydro has not demonstrated why such an alternative order would be inappropriate. While BCOAPO does not think it would be necessary for BC Hydro to come forward with its own proposal, if the Commission deems it necessary to have more information prior to approving the ESUB, then this approach would be reasonable and appropriate.

3.7. Response to BC Hydro and CEC Regarding the Crisis Intervention Fund

BCOAPO describes the proposed Crisis Intervention Fund at section 6.2 of our September 26th Final Argument. BC Hydro and the CEC (and FortisBC) are opposed to the Crisis Intervention Fund. Below we provide a combined response to both BC Hydro and the CEC.

In responding, it is just as important to note that the response to the Crisis Intervention Fund consists as much of what those parties did *not* challenge as it consists of what those parties did challenge. The propositions that opposing parties left unchallenged, either through testimony or through argument, include the following:

- Crisis intervention is not intended to be an annual income supplement for low-income customers, nor is it intended to be a regular source of financial assistance. A crisis intervention grant would respond to unexpected and temporary circumstances that place a customer's service in jeopardy.¹¹²
- The range of negative options available to a consumer facing unaffordable electricity bills far outstrips the range of constructive options available to such a low income consumer. The range of 'negative' options available to consumers can be further classified into two categories. Some options merely represent a significant degradation in a low income customer's quality of life. Other options are counter-productive. Not only do they not solve the consumer's inability to pay, they affirmatively contribute to or exacerbate that problem.¹¹³
- One purpose of the Crisis Intervention Fund is to address the immediate need to prevent the customer from pursuing one of the negative options that will be ineffective or even counter-productive to having the customer maintain a long-term paid-up relationship with BC Hydro. The purpose of the crisis intervention process, in other words, is to short circuit the need for the customer to pursue the

¹¹² Exhibit C2-12, Direct Testimony of Roger Colton, p. 37-38 (PDF p. 42-43).

¹¹³ Exhibit C2-12, Direct Testimony of Roger Colton, p. 41 (PDF p. 46).

negative options that would cost not only that customer but cost all ratepayers money in the long-term.¹¹⁴

- The crisis intervention program that BCOAPO has presented is a way to respond more effectively and more efficiently by the utility to non-payment, and to improve the complete timely, regular, unsolicited payment of bills. It is not a social program. It is a program to help the utility improve its own efficiency of operations.¹¹⁵
- There is substantial information documenting that there is a risk of bad debt when customers have arrears of a sufficient size that the customer will never be able to fully retire them. The reduction of working capital resulting from crisis intervention funds is a far larger expense reduction than the reduction of bad debt. A reduction in working capital results from the retirement or reduction of arrears.¹¹⁶
- It is this focus on generating a utility benefit that distinguishes the Crisis Intervention Fund from a government funded social assistance program..¹¹⁷

At paragraph 75 of BC Hydro's October 11th Argument, BC Hydro puts forward two arguments against the Crisis Intervention Fund. First, BC Hydro argues that the Fund is not a "rate"; but rather, that "the substance of the proposal is an annual BC Hydro grant to a third-party relief agency."¹¹⁸ Second, BC Hydro argues that "assuming one accepts the Crisis Intervention Fund as a rate proposal, it is plainly discriminatory as it is only available to and at best benefits a small segment of low-income residential customers, but would be paid for by all customer classes."¹¹⁹

BC Hydro's argument that the Crisis Intervention Fund is, in substance, "an annual BC Hydro grant to a third-party relief agency" does not reflect BCOAPO's proposal. BC Hydro's argument that the Fund is "plainly discriminatory" should also be rejected. In BCOAPO's view, any discrimination is not undue, and the Fund would result in utility service that is just and reasonable.

At paragraph 76, BC Hydro argues that the Fund should not be approved because the cost-effectiveness test Mr. Colton would employ is inappropriately narrow insofar as it doesn't consider the entirety of incremental costs and revenues arising from the proposal.

The only "incremental" costs that BC Hydro is actually able to identify with respect to the Fund are the costs involved with administration. BCOAPO notes that Mr. Colton has

¹¹⁴ Transcript Volume 7, p. 1235, lines 17-26; p.1236, line 1.

¹¹⁵ Transcript Volume 7, p. 1252, lines 13-20.

¹¹⁶ Exhibit C2-17, BCOAPO Response to BC Hydro 15.3.

¹¹⁷ Transcript Volume 7, p. 1306, lines 4-16.

¹¹⁸ BC Hydro October 11th Final Argument, para. 75.

¹¹⁹ BC Hydro October 11th Final Argument, para. 75.

already acknowledged those costs and explained how they would be addressed. During the oral hearing, counsel for MoveUp asked Mr. Colton the following: “Have you costed the costs of implementing and administering the ESUB and then also any changes that need to be made to accommodate your proposed terms and conditions, or the crisis intervention fund that you're proposing?” In response, Mr. Colton stated:

[L]et me take each of those separately. The crisis intervention fund has been costed at a quarter per month per customer...And so everything is taken out of that. I would expect an administrative rate of about ten percent, but those administrative costs would be taken out of that pot of money.¹²⁰

The exchange continued:

MS. WORTH: Q: Okay. Well, you said that you assumed a ten percent cost for administering the crisis intervention fund. Was that a figure that you actually developed in conjunction with BC Hydro, or was that an assumption that you've made sort of external to any discussions that BCOAPO may have had with them? I'm just wondering how you arrived at that 10 percent figure?

MR. COLTON: A: The 10 percent figure is simply the general administrative costs that similar funds allow their administrators, and it's a cost cap on administration. If an administrator can administer the program with 5 percent, which the Ohio utilities do, they come in at about a 5 percent administrative rate, that's great. That means more money for benefits, but a general rule for administration is ten percent.¹²¹

At paragraph 75 of its October 11th Argument, BC Hydro states that Mr. Colton's cost-effectiveness test with respect to the Fund did not “consider the entirety of incremental costs and revenues arising from the proposal”; however, this is inaccurate. As BCOAPO has clearly indicated, the monthly surcharge of \$0.25 covers all costs, including start-up and administrative costs. BC Hydro has not identified any incremental costs that have not be considered.

At paragraph 76 of BC Hydro's October 11th Argument, instead of addressing the substantive merits of BCOAPO's submission that Fund is a cost-effective response to customers owing the BC Hydro money in “a situation that threatens the continuing ability of that customer to take electric service,”¹²² BC Hydro states that “the balance of Mr. Colton's testimony on the all-customer benefits of the Fund are unsupported assertions that should be given no weight in light of the advocacy role that Mr. Colton took in this proceeding.”

¹²⁰ Transcript Volume 7, p. 1307, lines 19-26; 1308, lines 1-7.

¹²¹ Transcript Volume 7, p. 1308, lines 8-24.

¹²² Exhibit C2-12, Direct Testimony of Roger Colton, at 35 (PDF p. 40).

This argument is plainly unfair and unreasonable. Mr. Colton legitimately informed the Commission of the results of his research for the U.S. Department of Health and Human Services, the federal agency that administers the federal fuel assistance program (the Low-Income Home Energy Assistance Program or “LIHEAP”), and set out his findings.¹²³ And BCOAPO previously supplied the resulting report in response to an information request from the CEC.¹²⁴

At paragraph 247 of the CEC’s Final Argument, CEC objects to the Crisis Intervention Fund surcharge because BCOAPO proposes to apply the surcharge to all customer classes. CEC argues that the benefits of the Fund are not adequately established, asserting that the only support appears to come from a single American study.¹²⁵ BCOAPO notes, however, that in the actual transcript citation on which CEC relies to make that point, it is clear that the American study was merely an example — Mr. Colton stated “there is a study, for example, by the U.S. Chamber of Commerce and the American Manufacturer’s Association...” (emphasis added).¹²⁶

BCOAPO has provided further information concerning the benefits of a residential customer Crisis Intervention Fund to other customer classes. For example, in response to an information request from BCSEA-SCBC, BCOAPO provided a study that considered the benefits to commercial businesses from bill assistance for low income customers¹²⁷ That study stated in relevant part:

Offering affordable rates to low-income customers can be expected to have long-term positive impacts for the utility from the perspective of maintaining and expanding its revenue base. The provision of a strong social safety-net so that individuals and households do not face the deprivation of basic household necessities is a strong and growing factor in businesses making locational decisions. These locational factors are particularly important for high technology firms, which represent a particularly strong future growth potential for the economy. Research for Ontario’s Ministry of Enterprise, Opportunity and Innovation, in collaboration with the Institute for Competitiveness and Prosperity, reports that sound economic development policy includes ensuring that ‘the right social investments are made to ensure social harmony.’¹²⁸

¹²³ Transcript Volume 7, p. 1235, lines 1-22. The full quote is set out in BCOAPO’s September 26th Final Argument at pp. 69-70.

¹²⁴ Exhibit C2-20, BCOAPO Response to CEC 18.1 (see the second paper cited in that IR response).

¹²⁵ CEC Final Argument, para. 247.

¹²⁶ Transcript Volume 7, p. 1251, lines 4-6.

¹²⁷ Exhibit C2-18, BCOAPO Response to BCSEA 4.4. See the study cited in that IR response: Roger Colton, *Home Energy Affordability in Manitoba: A Low-Income Affordability Program for Manitoba Hydro*, online: Fisher, Sheehan & Colton Public Finance & General Economics, <http://greenactioncentre.ca/wpcontent/uploads/2011/01/Hom-Energy-Affordability-in-Manitoba-A-Low-Income-Affordability-Program-for-Manitoba-Hydro.pdf>.

¹²⁸ *Ibid*, at 97.

That study also states that “[t]he connection between assuring access to basic household necessities and maintaining the competitiveness of the local economy has been recognized throughout Canada.”¹²⁹

BCOAPO has established that a Crisis Intervention Fund will benefit all customer classes. Contrary to CEC’s characterization,¹³⁰ BCOAPO does not view a charge of \$0.25/month (\$3.00/year) per customer to be an unfair or unreasonable burden on customers in other classes, given the benefits to all customers. However, as noted above, BCOAPO is not opposed to cost recovery for the Fund being limited to the residential customer class.

3.8. Response to BC Hydro and CEC Regarding Terms and Conditions of Service

BCOAPO provides its response to BC Hydro and CEC’s argument about BCOAPO’s proposed changes to BC Hydro’s Terms and Conditions of service for low income customers and residential customers as a whole in the sections below.

3.8.1. Extend Payment Plans to 12 Months

BC Hydro opposes BCOAPO’s proposal that BC Hydro extend deferred payment arrangements (DPAs) to a term of 12 months.¹³¹ At paragraph 80 of its October 11th Argument, BC Hydro argues that “given the well-documented fact that electricity bills are higher in the winter, DPAs that extend past the winter months will only serve to exacerbate the challenges that customers have paying their bills, and make it less likely they will ever be collected.” The CEC makes the same argument at paragraphs 270-273 of its Final Argument. With respect, both elements of that argument (that DPAs should be completed before the winter; that DPAs extending into the winter are less likely to be collected), however, are incorrect and should be rejected as a basis to oppose BCOAPO’s proposal.

BCOAPO submits that the argument that DPAs should always be paid before the winter is arbitrary. At the oral hearing, BCOAPO provided data on the terms of existing payment plans, both in numbers of installments and in numbers of days.¹³² BC Hydro does not currently require DPAs to be completed before the winter months. Indeed, DPAs BC Hydro currently enters into during the pre-winter months of November and December are of a nearly identical length (in days) as DPAs which BC Hydro enters into

¹²⁹ *Ibid*, at p. 97.

¹³⁰ At paragraph 251 of the CEC’s Final Argument, the CEC refers to the \$3.00 per year (\$0.25/month) Crisis Intervention Fund charge as “an additional burden on the commercial sector.”

¹³¹ As BCOAPO has noted, however, an alternative to this proposal would be to place “a limit on required arrearage payments so that arrearage payments would not exceed an average monthly bill.” BCOAPO September 26th Argument, at p. 77. As BCOAPO notes, “Offering this alternative addresses the “small” arrears. If someone owes \$50, it makes less sense to require that account balance to be spread over a minimum of 12 months. Under the BCOAPO proposal, fewer months can be used, so long as the monthly payment does not exceed the average monthly bill.” *Ibid.*, at footnote 279.

¹³² Exhibit C2-47.

in months where the DPA would not extend into the winter. BC Hydro has not previously expressed concerns about whether DPAs extend into the winter months. As shown in the Table below, customers entering into DPA's which extend into cold weather months receive the same time as customers whose DPAs do not extend into cold weather months.¹³³

DPA Average Terms in Days by Selected Months				
	May	July	November	December
2012	77	77	76	75
2013	68	73	76	79
2014	68	80	79	78
2015	65	68	75	N/A

Moreover, BC Hydro's data does not support the argument that DPAs that extend into cold weather months are more likely to default. Stated conversely, having DPAs extend into the winter months does not impede their successful completion. The Table below presents the data.¹³⁴ Contrary to BC Hydro's argument, DPAs whose terms are entirely within the cold weather months do not have lower completion rates.

Default Rate of DPAs by Selected Months						
	January	February	May	July	November	December
2012	52%	52%	57%	63%	63%	62%
2013	61%	58%	63%	62%	58%	63%
2014	59%	59%	60%	60%	60%	63%
2015	55%	56%	59%	57%	44% /a/	23% /a/
/a/ At the time the data was generated, these months would have not had sufficient time to determine whether the DPAs would default or be completed.						

BC Hydro has not responded to BCOAPO's demonstration that improving the affordability of DPAs by extending their length will improve the success rate of those payments plans. BC Hydro has also not responded to BCOAPO's demonstration that improving the success rate of these DPAs will increase revenues. BCOAPO's proposal to extend the length of payment plans, either by setting a minimum DPA length of 12

¹³³ *Ibid.*

¹³⁴ *Ibid.*

months or by setting a maximum DPA payment of no more than the customer’s underlying average monthly bill, should be approved.¹³⁵

Even though imposing a monthly installment limit of one average monthly bill would extend DPAs (as the rule would be intended to do to make each monthly payment more affordable), such extensions would not be burdensome to BC Hydro. BC Hydro reported, for example, that an average annual heating bill is \$832.92 (making the average monthly bill \$69.40).¹³⁶ BC Hydro similarly reported that an average annual non-heating bill was \$693.52 (average monthly bill of \$57.85).¹³⁷ BC Hydro provided the average installment payment by the number of installments in response to BCOAPO discovery.¹³⁸ The Table below sets forth, for the four most recent months reported by BC Hydro (August 2015 through November 2015), what the average number of installments would have been if limited by the “average bill” decision rule.

August 2015			
Average Installment by Month and Number of Installments ¹³⁹		Average Number of Installments at BCOAPO Proposed Monthly Installment Ceiling	
Number of Installments	Avg Installment Under Current Practice	No. of Installments at Avg Htg Bill (\$67.40)	No. of Installments at Avg Non-Htg Bill (\$57.85)
1	\$224	3	4
2	\$248	7	9
3	\$298	13	15
4	\$233	13	16
5	\$278	20	24
6	\$110	10	11
September 2015			
Number of Installments	Avg Installment Under Current Practice	No. of Installments at Avg Htg Bill (\$67.40)	No. of Installments at Avg Non-Htg Bill (\$57.85)
1	\$806	12	14
2	\$327	9	11
3	\$230	10	12
4	\$249	14	17
5	\$257	18	22
6	\$169	15	18

¹³⁵ BCSEA-SCBC argue that BCOAPO’s proposal regarding payment plans for low income customers is unnecessarily limiting (BCSEA Final Argument, paras. 265-267). BCOAPO is amenable to offering flexibility with respect to payment plan lengths as long as low income customers have the right to choose payment plan lengths of at least 12 months, and are advised of that right at the time of payment plan setup. BCOAPO maintains that limitations on the amount of arrearage payments are critical.

¹³⁶ Exhibit B-5, BCOAPO 1.74.1.

¹³⁷ Exhibit B-5, BCOAPO 1.74.1.

¹³⁸ Exhibit B-5, BCOAPO 1.204.1(e).

¹³⁹ Exhibit B-5, BCOAPO 1.204(e).

October 2015			
Number of Installments	Avg Installment Under Current Practice	No. of Installments at Avg Htg Bill (\$67.40)	No. of Installments at Avg Non-Htg Bill (\$57.85)
1	\$234	3	4
2	\$264	8	9
3	\$273	12	14
4	\$228	13	16
5	\$277	20	24
6	\$160	14	17
November 2015			
Number of Installments	Avg Installment Under Current Practice	No. of Installments at Avg Htg Bill (\$67.40)	No. of Installments at Avg Non-Htg Bill (\$57.85)
1	\$184	3	3
2	\$288	8	10
3	\$220	9	11
4	\$682	39	47
5	\$222	16	19
6	\$118	10	12

While there is no question that it would take longer to complete a DPA under BCOAPO’s proposed installment ceiling, the likelihood that the DPA would be completed at all substantially increases. The above data demonstrates, however, that BC Hydro’s concern that a customer would never repay outstanding arrears given BCOAPO’s proposed monthly installment ceiling is simply not true.

3.8.2. Reconnection and Account Charge Waiver

Both BC Hydro and the CEC¹⁴⁰ oppose exempting low income households from paying reconnection and account charges. According to BC Hydro, since 96.6% of its disconnected accounts are reconnected within 60 days, reconnection charges are not a barrier to the reconnection service. BC Hydro fails to address the substantial number of customers who cannot reconnect service (or do so in a timely fashion) due to the financial barriers the reconnection charge presents. In 2015, BC Hydro disconnected 32,564 customers for nonpayment.¹⁴¹ According to BC Hydro itself, a substantial number of those customers had difficulty getting reconnected:

- Nearly 5,000 of those customers could not reconnect within seven days;¹⁴²

¹⁴⁰ The CEC opposes charge waiver despite that it “accepts that the addition of more costs can be counterproductive in facilitating repayment and future payment stability” and that “BC Hydro has significantly increased their disconnection and reconnection rate as a result of smart meter capability which created a significant revenue stream for the company”: CEC Final Argument, para. 253.

¹⁴¹ Exhibit B-26-1, BCOAPO 1.192.1, Attachment 1.

¹⁴² $32,564 * (1 - .847) = 4,983$. Exhibit B-26-1, BCOAPO 1.192.1, Attachment 1.

- Nearly 2,750 of those customers could not reconnect within 21 days;¹⁴³
- More than 1,100 of those customers could not reconnect within 60 days.¹⁴⁴

Moreover, reconnecting within 60 days is not necessarily a sign of things working well – low income people going without an essential service for even a fraction of that length of time is a health and safety issue.

BCOAPO provided uncontroverted evidence that the reconnection charge creates an additional barrier to reconnection for customers who have been disconnected because they cannot afford to pay their bill.

BC Hydro argues that both its account charge and its reconnection charge are “cost-based”; however, BC Hydro never directly addresses the lack of a causal connection between the costs that it claims underlie these two charges. The costs BC Hydro collects through its reconnection and account charges are simply part of a larger set of “customer service” costs. BC Hydro admits that “[d]isconnection and reconnection activities are not planned or recorded as separate cost elements.”¹⁴⁵ BC Hydro further admits that rather than having a causal connection, when it sets its charges, “[a]ctual costs are then *allocated based on volumes*.”¹⁴⁶ Even when describing the costs allocated to the account and reconnection charges from its “Field & Grid Operations department,” BC Hydro concedes that “again, these costs are not planned or recorded as costs specifically for disconnections or reconnections.”¹⁴⁷

Even BC Hydro’s witness, on cross-examination, conceded that there is no direct causal connection between the level of the reconnection charge and the costs incurred—he acknowledged that when BC Hydro was looking at how to adjust the reconnection charge, there were a number of models BC Hydro could look at with respect to cost allocation.¹⁴⁸ Rather than establishing a causal connection, in other words, BC Hydro simply sought a way to allocate its general customer service costs to the reconnection charge. Since the costs do not vary (up or down) based on the number of reconnections (or account changes for the account charge), no direct causal connection can be drawn between the costs being incurred and the customers being charged those costs.

BCOAPO notes that when BC Hydro resources are not devoted to the reconnection of service, those costs are not foregone or reduced, they are simply reallocated to other customer service functions. In short, BCOAPO has not challenged the level of costs that BC Hydro incurs on its customer service functions. Instead, BCOAPO challenges the causal connection between those costs.

¹⁴³ $32,564 * (1 - .916) = 2,736$. Exhibit B-26-1, BCOAPO 1.192.1, Attachment 1.

¹⁴⁴ $32,564 * (1 - .966) = 1,108$. Exhibit B-26-1, BCOAPO 1.192.1, Attachment 1.

¹⁴⁵ Exhibit B-5, BCOAPO 1.195.1 (emphasis added).

¹⁴⁶ Exhibit B-5, BCOAPO 1.195.1 (emphasis added).

¹⁴⁷ Exhibit B-5, BCOAPO 1.195.1 (emphasis added).

¹⁴⁸ Transcript Volume 7, p. 1197, lines 6-9.

BCOAPO is supportive of the reduction of the reconnection charge to \$30, and does not challenge either the reconnection charge or the account charge for residential customers as a whole. Rather, given (1) the lack of cost causation, (2) the extent to which the reconnection charge and account charge are barriers to service for low income customers, and (3) the harm to BC Hydro by applying additional charges to people who already cannot afford to pay their bills, BCOAPO has proposed that low income customers be exempted from these charges.

3.8.3. Security Deposit Waiver

Both BC Hydro and the CEC oppose BCOAPO's proposal that BC Hydro waive the security deposit requirement for low income customers. At paragraphs 87-88 of its October 11th Argument, BC Hydro states that it opposes this proposal for three reasons: (1) security deposits provide BC Hydro with protection against bad debt; (2) any customer who poses a credit risk may be assessed a security deposit; and (3) while waiving security deposits for low-income customers "may benefit BC Hydro's low-income customers it would ultimately be paid for by all customers."¹⁴⁹

Each of those arguments was addressed in the data and analysis presented in BCOAPO's Final Argument dated September 26, 2016, and will not be repeated here. BC Hydro has not rebutted BCOAPO's demonstration that security deposits are not necessary or effective in protecting BC Hydro against bad debt, that deposits are almost universally imposed on customers who pose no credit risk, and that waiving security deposits for low income customers would create no additional costs to be paid for by all customers.¹⁵⁰

At paragraph 88 of its October 11th Argument, BC Hydro frames BCOAPO's argument as being that BC Hydro's practices with respect to its assessment of security deposits could be improved, and BC Hydro states that this is something it has already acknowledged in this proceeding. BC Hydro does not say what it considers to be improvement, and fails to acknowledge that in this proceeding, BC Hydro is proposing is to *increase* the number of deposits imposed and to *increase* the time which deposits are held. Those actions are hardly improvements in the process of imposing security deposits on customers who pose no credit risks.¹⁵¹

Given the unreasonable burdens that security deposits can impose on low income customers, and the lack of relationship between credit risks and the imposition of those deposits, BCOAPO's proposal to exempt low income customers from deposits should be approved.

¹⁴⁹ BC Hydro October 11th Final Argument, para. 88.

¹⁵⁰ BCOAPO Final Argument dated September 26, 2016, pp. 85-90.

¹⁵¹ Accordingly, while BCOAPO acknowledges BCSEA's proposal to allow BC Hydro to waive deposits "based on the circumstances" (BCSEA Final Argument, para. 260), since BC Hydro has unreasonably denied any circumstances that would merit such a waiver, such a proposal does not adequately address BCOAPO's concerns.

3.8.4. Late Payment Charge Waiver

At paragraphs 259 – 261 of its Final Argument, the CEC opposes BCOAPO's proposal concerning waiver of Late Payment Charges for low income customers, primarily because the late payment charge according to BC Hydro is cost-based. BC Hydro does not respond independently to BCOAPO's proposal to exempt low income customers from late payment charges. Instead, BC Hydro adopts its argument regarding BCOAPO's proposal to begin the imposition of late payment charges at Day 60. These arguments are accordingly addressed in that section below.

3.8.5. Late Payment Charge Limited to Short-Term Cost of Debt.

At paragraph 91 of its October 11th Argument, BC Hydro opposes BCOAPO's proposal to limit late payment charges to BC Hydro's short-term cost of debt, arguing that BC Hydro's rebuttal evidence "explains how customers who pay late cause BC Hydro to incur costs in excess of carrying costs that are about equal to the revenue generated from the portion of the LPC...that is in excess of BC Hydro's weighted average cost of debt." The CEC also opposes BCOAPO's proposal.

BCOAPO has clearly demonstrated how excessive the BC Hydro late payment charge is, whether relative to the carrying costs standing alone or compared to the combination of carrying costs and collection costs.¹⁵² Mr. Colton's analysis involved imposing a Late Payment Charge of 1.5% beginning on Day 30 and continuing through Day 40 of each month.¹⁵³ Mr. Colton then compared the accrued Late Payment Charges to two different levels of carrying costs: (1) carrying costs cumulative from the day of the bill (Day 1); and (2) carrying costs cumulative from the day the bill becomes overdue (Day 21).¹⁵⁴

By applying the carrying charge to actual bills, one can compare the revenue to the carrying costs that would be incurred by BC Hydro. Mr. Colton found the following:

- In May 2014, BC Hydro would have collected \$45 in Late Payment Charge revenue given the billing and rate of payment over the first 40 days. In contrast, BC Hydro would have experienced a carrying cost of only \$7.92 if the Late Payment Charge revenue is compared to carrying costs accrued from the first day that payments were late (Day 21) through Day 40.
- In August 2014, BC Hydro would have collected \$45 in Late Payment Charge revenue, compared to carrying costs of only \$8.06 from the first day that payments were late (Day 21) through Day 40.

¹⁵² BCOAPO disputes whether the BC Hydro late payment charge is "cost-based." That argument is set forth in the section above regarding the proposal exempt low-income customers from paying the late payment charge.

¹⁵³ At hearing, BCOAPO provided a revised schedule and testimony, in which the late payment charge is imposed on Day 30 (the day on which the LPC is actually imposed) rather than on Day 21, the first day a bill is late.

¹⁵⁴ Exhibit C2-39, at pp. 91-92 (revised) and Schedule RDC-4 (revised).

- In January 2015, BC Hydro would have collected \$45 in Late Payment Charge revenue, compared to carrying costs of only \$7.99 from the first day that payments were late (Day 21) through Day 40.¹⁵⁵

Mr. Colton concluded that “[t]he BC Hydro Late Payment Charge clearly over-compensates the Company for the Company’s carrying costs.”¹⁵⁶ Moreover, even if one accepts (solely for the sake of argument) BC Hydro’s estimate of the level of its collection costs – a level which BCOAPO disputes – the difference between the carrying costs and the level of late payment charge far exceeds any additional collection costs.

BCOAPO submits that BC Hydro’s argument that it needs a late payment charge to reflect the average weighted cost of debt rather than its short-term carrying costs is not supported by the evidence and should be rejected. BC Hydro’s Late Payment Charge should be set equal to the short-term cost of debt.¹⁵⁷

3.8.6. Late Payment Charge Application Starting at Day 60

Both BC Hydro and the CEC oppose BCOAPO’s proposal that it delay the imposition of late payment charges until Day 60 following the bill’s due date, rather than BC Hydro’s current practice of imposing late payment charges starting at Day 30.

First, at paragraph 93 of BC Hydro’s October 11th Argument, BC Hydro argues that there is “ample evidence...which clearly shows BC Hydro incurs carrying costs *from the day the service is provided...*” (emphasis added). At paragraph 95 BC Hydro states that under BCOAPO’s proposal “BC Hydro would be out of pocket for carrying costs for 60 days *before a bill is even issued.*” (emphasis added). This argument supports, rather than detracts from BCOAPO’s proposal. The purpose of a late payment charge should only be to compensate BC Hydro for carrying charges incurred because of the late payment.

BC Hydro’s apparent argument that it has structured its late payment charge not simply to recover those costs, but rather to also recover carrying costs “from the day the service is provided,” would indicate that the late payment charge is excessive. Seeking to recover carrying costs “from the day the service is provided,” of course, would include carrying costs before a bill is even issued, given that service is “provided” and billed afterwards. The purpose of a late payment charge is not to help recover carrying costs “from the day the service is provided.”

At paragraph 94, BC Hydro argues that since a high percentage of customers make their payments on the due date or directly after, “one can reasonably infer, at a minimum, that this is causally connected to a desire to avoid the imposition of the LPC.” With respect, BC Hydro’s inference in this regard is without basis in evidence. BCOAPO

¹⁵⁵ Exhibit C2-39, p. 92 (revised).

¹⁵⁶ Exhibit C2-39, p. 92 (revised).

¹⁵⁷ As noted in BCOAPO’s Final Argument dated September 26, 2016, this proposal is not limited to low income customers nor to residential customers.

specifically asked BC Hydro to produce any studies in its custody or control documenting the effectiveness of a late payment charge as an incentive to pay for (a) residential customers and (b) low income residential customers.¹⁵⁸ BC Hydro responded that it “does not have any studies on the effectiveness of the Late Payment Charge as an incentive to pay outstanding balances.”¹⁵⁹

The fact that BC Hydro customers pay their bills by the due date (Day 21), even though the late payment charge is not imposed until Day 30, is indicative of the fact that the late payment charge is not an incentive to pay. If BC Hydro’s analysis were correct (i.e. that customers only make their payments in time to avoid the late payment charge), customers would not make payments until Day 29 (given that the LPC is imposed on Day 30). In fact, BC Hydro’s own data shows that very few customers who do not pay by the due date pay by Day 30 in order to avoid the Late Payment Charge.¹⁶⁰ The bulk of customers paying after the due date (Day 21) pay on Days 22 through 24 (indicating that they are simply a few days late, not that they are waiting until they must pay to avoid the late payment charge).¹⁶¹ BC Hydro’s data shows that hardly any residential customers wait until the last moment to pay their bills in order to avoid paying a late charge. The percentage of customers making payments on Day 30 was above 0% in only two months. There were no months in which the percentage of customers making payments on Day 28 or Day 29 above 1%.¹⁶²

Percentage of Residential Customers Making Payments by Day			
Month	Day 28	Day 29	Day 30 (LPC imposed)
April 2014	1%	1%	0%
May 2014	1%	1%	0%
June 2014	1%	1%	0%
July 2014	1%	1%	0%
August 2014	1%	1%	0%
September 2014	1%	1%	0%
October 2014	1%	1%	1%
November 2014	1%	1%	0%
December 2014	1%	1%	1%
January 2015	1%	1%	0%

¹⁵⁸ Exhibit B-5, BCOAPO 1.181.1.

¹⁵⁹ *Ibid.*

¹⁶⁰ Exhibit B-23, BCOAPO 2.299.1 (resubmitting BCOAPO 1.179.1).

¹⁶¹ Exhibit B-23, BCOAPO 2.299.2 (resubmitting BCOAPO 1.186.1).

¹⁶² Exhibit B-23, BCOAPO 2.299.2 (resubmitting BCOAPO 1.186.1).

February 2015	1%	1%	0%
March 2015	1%	1%	0%

The causal connection that BC Hydro states that it can “reasonably infer” is not only unsupported by the evidence, but is actually directly contradicted by BC Hydro’s own data.¹⁶³ Residential customers do not base when they make their payments on the imposition of a Late Payment Charge. BCOAPO submits that one reason why BC Hydro could offer no evidence on the extent to which a Late Payment Charge serves an incentive function is because the Late Payment Charge does not serve such a function.

Given BCOAPO’s demonstration in its September 26th Final Argument that the Late Payment Charge is neither cost-based, nor causally related to the customers on whom it is imposed, and the fact that the BC Hydro Late Payment Charge violates the Matching Principle, BCOAPO’s proposal that BC Hydro begin imposition of the Late Payment Charge on Day 60 should be approved.¹⁶⁴

3.8.7. Disconnection Delays beyond Medically Necessary

BC Hydro has said it will delay disconnection of service for 20 days for customers who demonstrate a medical reason for requiring power to allow such customers extra time to enter into a DPA.¹⁶⁵ BC Hydro and the CEC oppose providing the same extended time period to customers who are seniors and those with very young children. BC Hydro argues at paragraph 98 of its October 11th Argument that “this is self-evidently an impractical idea.”

Maintaining a “flag” in BC Hydro’s customer records to identify particularly vulnerable customers as Mr. Colton recommends is possible.¹⁶⁶ When asked about a similar flag for MSDSI recipients, BC Hydro stated the following: “To keep a permanent record, a field would need to be added to indicate the customer is receiving assistance from MSDSI. The addition of a single field for this purpose is minimal effort and could be accomplished through regular sustainment efforts to the billing system.”¹⁶⁷ BC Hydro itself acknowledged that the addition of a field is minimal effort.¹⁶⁸ The purpose of

¹⁶³ This data also addresses BCSEA’s concern that “such an exemption could have the unintended adverse consequence of facilitating a low income customer to defer payment beyond the due date for immediate reasons only to build up arrears that could raise a risk of disconnection” (BCSEA Final Argument, para. 261).

¹⁶⁴ As previously indicated, this proposal is not income-based, and would apply to all customers.

¹⁶⁵ BC Hydro October 11th Argument, para. 98.

¹⁶⁶ BC Hydro must argue that the “impracticality” is “self-evident” since it offered no evidence to indicate or support the proposition that it is “impractical.”

¹⁶⁷ Exhibit B-23, BCOAPO 2.345.1.

¹⁶⁸ *Ibid.* BC Hydro stated further, however, that “there *could* be considerable effort in maintaining the accuracy of the customer record because MSDSI’s client list is not static. As a result, there would need to be a recurring process in which BC Hydro updates its records with MSDSI’s client list. . Note that BC Hydro does not state that there “would be” considerable effort.” Instead, BC Hydro asserts, and BCOAPO agrees, that “the optimal solution would depend on a number of factors depending

BCOAPO's proposal is to protect the health and safety of vulnerable customers.

3.8.8. Using External Credit Scores to Establish Need for Deposits

At paragraphs 99-101 of its Final Argument, BC Hydro opposes BCOAPO's proposal that BC Hydro be prohibited from using non-utility credit history to determine the creditworthiness of an applicant for utility service. CEC is not as explicit in its rejection of BCOAPO's proposal, but BCOAPO infers that the CEC is opposed.¹⁶⁹ BC Hydro does not respond to the BCOAPO's observations about the specific problems resulting from BC Hydro's use of an Equifax "pass/fail" creditworthiness determination as set out at section 6.3.7 (pages 92 – 95) of BCOAPO's September 26th Final Argument.

At paragraph 100, with respect to Mr. Colton's assertion that non-utility credit scores are not relevant to a person's electricity service credit-worthiness, BC Hydro states that "[t]he assertion is not supported by any evidence other than Mr. Colton's bare opinion." BC Hydro appears to disregard the eight attachments BCOAPO provided in response to an information request from the CEC,¹⁷⁰ wherein BCOAPO provided data in support of the proposition that "[a]vailable research indicates that customers pay their utility bills before paying other bills (other than perhaps rent or mortgage payments)."¹⁷¹

There is considerable evidence on the record in this proceeding that customers pay their utility bills before paying virtually all other bills (other than perhaps rent or mortgage). Simply because someone has not paid their Hudson's Bay bill, for example, does not mean that they will fail to pay their electric bill. Given these facts, particularly combined with the inability to challenge (or even be informed) of any Equifax errors, the use of external credit reports as a basis for imposing a deposit should be barred.¹⁷²

3.8.9. Non-Cash Security Deposits

BC Hydro does not appear to oppose BCOAPO's proposal that the use of sureties in lieu of a cash security deposit should not be limited to individuals, but should allow for organizations (such as churches or community-based organizations) and government organizations to act as sureties.¹⁷³ This proposal should be approved.

In addition, BC Hydro does not provide any opposition to BCOAPO's proposal that a surety (and/or guarantee) "is intended to stand in lieu of a cash security deposit. Accordingly, the surety should extend only to the limits of what the cash security deposit

on use of the record (i.e., which could dictate the required frequency of updates), cost, and privacy considerations." This, however, hardly asserts that such an effort would be "impractical."

¹⁶⁹ CEC Final Argument, paras. 280-281.

¹⁷⁰ Exhibit C2-20, BCOAPO Response to CEC 1.18.1. See the eight documents cited in that IR response.

¹⁷¹ *Ibid.*

¹⁷² BCSEA argues that external credit scores could possibly allow low income customers to establish creditworthiness where it would not otherwise be established (BCSEA Final Argument, para. 263). If the Commission agrees, BCOAPO's proposal could be modified to simply bar the use of external credit scores as a basis for requiring deposits (i.e., the use of "fail" Equifax reports would be prohibited).

¹⁷³ BCOAPO September 26th Final Argument, p. 90.

otherwise would have been.”¹⁷⁴ The Commission should reject BC Hydro’s proposal that sureties must extend to an entire unpaid bill rather than simply the amount of the deposit.

Finally, at paragraph 103, BC Hydro argues that BCOAPO has “adduced no evidence to say that such a scheme would be cost-effective.” In fact, when asked by BC Hydro for a comprehensive review of utilities that have successfully implemented sureties and deposits, BCOAPO provided that review.¹⁷⁵ The information was provided, despite the fact that BC Hydro elected not to review it.

3.9. Response to BC Hydro and CEC Regarding BCOAPO Proposals Not Involving Rates or Terms and Conditions

While the CEC has opposed all of BCOAPO’s proposals that do not involve rates or terms and conditions, BC Hydro has stated that they are willing to engage the Low Income Advisory Group (LIAG) in discussions about these proposals.

In response, BCOAPO’s view is that the potential for the LIAG to address these issues is insufficient for the Commission to avoid weighing in on these proposals. At a minimum, BCOAPO requests that the Commission assign these issues to the LIAG and direct BC Hydro to report back on these discussions within some reasonable period of time.

While BCOAPO suggested and certainly supports creation of the LIAG, and looks forward to participating, the LIAG should not be seen as a solution to the issues BCOAPO has raised in this proceeding. The LIAG is complementary to concrete bill affordability measures, not an alternative.

3.10. Response to BC Hydro and CEC Regarding Proposed Low Income DSM Findings

In its September 26th Final Argument, BCOAPO has provided a detailed description of what BCOAPO is seeking in this proceeding, and so no further response is necessary.

4. RESPONSE TO FORTISBC AND CEC’S ARGUMENTS REGARDING THE COMMISSION’S JURISDICTION TO ORDER LOW INCOME BILL AFFORDABILITY PROGRAMS

4.1. Response to CEC

At paragraph 184 of its Final Argument, the CEC adopts and supports BC Hydro’s arguments in its September 26th Final Argument with respect to the Commission’s jurisdiction to approve low income rates. BCOAPO has already provided a response to BC Hydro’s September 26th arguments concerning the Commission’s jurisdiction to

¹⁷⁴ BCOAPO September 26th Final Argument, p. 90.

¹⁷⁵ Exhibit C2-19, BCOAPO Response to BCUC 15.3.

approve low income rates in our October 11th Response Argument, and does not repeat those arguments here. Rather, BCOAPO focuses below on the aspects of CEC's legal argument that differ from or add to that of BC Hydro.

In response to paragraphs 185, 188, 194 and 198, the CEC is clearly upset that the government issued a special direction on the eve of the 2015 RDA prohibiting BC Hydro's rates from being rebalanced for F2017-F2019 based on the cost of service, despite that commercial customers' rates appear to collect more than the cost of providing them with service. BCOAPO did not ask the provincial government to refrain from rebalancing rates. In fact, the provincial government's constant interference with the Commission's regulation of BC Hydro is something that lawyers at the BC Public Interest Advocacy Centre have repeatedly spoken out against. Rates will be rebalanced eventually, presumably as part of BC Hydro's 2019 RDA. This is a time-limited prohibition against rebalancing, and as BCOAPO has clearly established, many people are already having difficulty paying their bills – this problem will only worsen as rates continue to increase. In any event, what the CEC seems to be arguing is that the Commission should consider BC government directives when making decisions about BCOAPO's proposals in the 2015 RDA. If the CEC is correct on this point, then the Commission would presumably also have the ability to consider the government's recent directives mandating that all BC Hydro ratepayers, including low income ratepayers, provide a subsidy of potentially \$430M to some of BC Hydro's pulp and paper and mining industrial customers.

In further response to paragraph 188, BCOAPO has addressed the issue of the Commission's jurisdiction to consider "ability to pay" in its September 26th and October 11th submissions. Briefly, BCOAPO agrees that the legislation does not explicitly provide any reference to "ability to pay." BCOAPO reiterates its position that the *UCA* gives the Commission *discretion* to consider factors in addition to cost of service, such as ability to pay. BCOAPO also notes that despite long-standing controversy over the Commission's jurisdiction, including during BC Hydro's 2008 RDA and the 2015 RDA, BCOAPO is not aware of direction by the legislature that the Commission does not have jurisdiction to consider ability to pay. Ontario and Manitoba's comparable legislation to the *UCA* also contain no reference to "ability to pay", and this did not stop the Manitoba Public Utilities Board, the Ontario Superior Court of Justice, and the Ontario Court of Appeal from finding jurisdiction to order bill affordability programs.

In response to paragraph 183, 245 and 246, all of BC Hydro's customers, including low income ratepayers, are being required to contribute to the "dividend" BC Hydro has been directed to pay the provincial government in an amount of approximately \$700 million for each of the years 2016 and 2017, and in excess of \$700 million for 2018, despite that BC Hydro will not collect sufficient funds from ratepayers in order to cover the costs of providing service. The CEC has presented no evidence to show that the government will use any portion of these "dividends" to assist low income customers to pay their rising BC Hydro bills, just as it presented no evidence to demonstrate that the funds were applied by the government to eliminate the highest rate of personal provincial income taxes.

At paragraph 189 of its Final Argument, the CEC correctly notes that section 5(c) of Special Direction No. 7 does not direct rate making to be based on assessment of affordability or income. However, it is equally correct that Special Direction No. 7 does not direct the use of performance based regulation either. Rather, the authorizing language is broad and permits the use of “any mechanism, formula or method” to set rates. The sole requirement, set out in *UCA* s.60(1)(b.1), is that the Commission considers the use of such mechanism, formula or method to be “advisable”. It would have been simple for the legislature to specify that the Commission could set rates based on either of two alternatives: cost of service or performance based regulation. The fact that it did not do so suggests that the more reasonable interpretation of Special Direction No. 7 and *UCA* s.60(1)(b.1) is that the Commission has much broader discretion than suggested by the CEC.

In response to paragraph 190, whether BCOAPO’s proposals constitute undue discrimination is a question of mixed fact and law and does not answer the threshold question of whether the Commission has jurisdiction to consider ability to pay in addition to cost of service.

In response to paragraph 191, while the *UCA* does not have an “objectives” section, it clearly identifies the requirement that the Commission regulate in the “public interest” and requires that public utilities provide “a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.” Further, there are numerous instances of Hansard cited in both BCOAPO and BC Hydro’s submissions where government MLAs speak to the public interest, consumer protection, and ensuring low prices. Further, protecting customers with respect to price is a traditional principle in rate setting. In *Advocacy Centre for Tenants-Ontario v Ontario Energy Board*, the Ontario Superior Court of Justice observed:

[39] The Board’s regulatory power is designed to act as a proxy in the public interest for competition in view of a natural gas utility’s geographical natural monopoly. Absent the intervention of the Board as a regulator in rate-setting, gas utilities (for the benefit of their shareholders) would be in a position to extract monopolistic rents from consumers, in particular, given a relatively inelastic demand curve for their commodity. Clearly, a prime purpose of the *Act* and the Board is to balance the interests of consumers of natural gas with those of the natural gas suppliers. The Board’s mandate through economic regulation is directed primarily at avoiding the potential problem of excessive prices resulting because of a monopoly distributor of an essential service.

In viewing the legislation, Hansard, and traditional rate setting principles holistically, it is clear there is legislative intent to protect consumers with respect to prices. It is trite to say that of course the Commission can consider customers. They can and do, for example when considering potential rate shock.

In response to paragraph 196, BCOAPO submits that it is neither accurate nor fair to characterize BCOAPO’s proposals as having discrimination as an end goal in and of itself. In response to paragraphs 196 and 197, the “unintentional and purposive”

argument advanced by the CEC raises did not prevent the Ontario Superior Court of Justice, Ontario Court of Appeal and the Manitoba Public Utilities Commission from finding jurisdiction to order low income bill affordability programs.

At paragraph 288, CEC “recommends that the Commission deny the BCOAPO proposal and encourage BC Hydro and BCOAPO to continue working together to develop suitable plans that are both beneficial and demonstrably cost-effective.” BCOAPO notes the BC Hydro has rejected the vast majority of BCOAPO’s proposals and specifically stated that it does not support proposals or amendments targeted solely at low income ratepayers.

4.2. Response to FortisBC

In response to paragraphs 2 and 3 of FortisBC’s Final Argument, while FortisBC has shown creativity in coming up with new terms (“non-status justifications”) to discuss the jurisdictional issue, its approach to jurisdiction is grounded in the same either/or analysis relied upon by BC Hydro. FortisBC addresses the question of whether the Commission has the jurisdiction to establish low income rates “in the absence of what we call “non-status justifications” (non-status justifications being a cost-of-service justification or other justification related to the nature and quality of service to which the rates relate).” Again, BCOAPO is not arguing that the Commission has the jurisdiction to consider “ability to pay” in isolation. Rather, BCOAPO is arguing that the Commission has jurisdiction to exercise discretion to consider factors such as ability to pay in addition to “non-status justifications.” More simply, BCOAPO is arguing that the Commission has the jurisdiction to engage in a holistic and integrative rate-setting analysis.

BCOAPO notes that both BC Hydro and FortisBC, by structuring their arguments to address whether the Commission has jurisdiction to consider “ability to pay” in a silo, have essentially set up a straw man argument. Neither BC Hydro nor FortisBC meaningfully respond to BCOAPO’s jurisdictional arguments—specifically, BCOAPO’s position that the Commission has the jurisdiction to holistically consider “ability to pay” alongside “non-status justifications.” BCOAPO therefore submits that BC Hydro and FortisBC’s jurisdictional arguments should be given little weight, as they are beside the point.

In response to paragraph 6, there are several issues with FortisBC’s application of the “presumption that a legislature does not intend a statute to change the prevailing law ‘without expressing its intentions to do so with irresistible clearness’” (“the Presumption of Stability”) as set out below:

- First, BCOAPO disagrees with FortisBC’s characterization of the Presumption of Stability. FortisBC appears to advance an extreme formulation which restricts any modification in the law to that stated explicitly. However, the more appropriate formulation is that modifications to the prevailing law may be made

either expressly or by necessary implication.¹⁷⁶ Even the case cited by FortisBC, *Rawluk v Rawluk*, references the possibility of changing the law through necessary implication when it concludes that “neither by direct reference nor by necessary implication does the Act prohibit the use of the constructive trust remedy.”¹⁷⁷

- Second, the intention to modify prevailing law can be deduced from the nature of the statute put in place by the legislature. If the statute is intended to establish exhaustive rules on a given subject, a conclusion that the prior law on this matter is done away with goes without saying.¹⁷⁸ The Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*,¹⁷⁹ stated that administrative tribunals are statutory creatures and derive their jurisdiction from express and implicit powers in their enabling statutes, not the common law. The *UCA* created the modern Commission and intended to provide exhaustive rules on the subject of the Commission's jurisdiction. Therefore, BCOAPO submits that the Presumption of Stability should be given little weight with respect to the subject matter of the Commission's jurisdiction.
- Third, FortisBC is presumptuous to conclude that in light of its extreme formulation of the Presumption of Stability, the “second source of tribunal jurisdiction identified in *ATCO*- implicit powers- should not apply at all. If the grant of jurisdiction is not express and could only arise by implication, then the statute necessarily does not contain the type of clear language that the courts have said is required to alter the established law.” In reaching this conclusion, FortisBC applies the Presumption of Stability *ex post facto* to the Supreme Court of Canada's analysis in *ATCO* in order to essentially modify the law arising out of *ATCO*. In *ATCO*, the Supreme Court of Canada addressed, in a general sense, the same jurisdictional question that is at play in this proceeding: what is the scope of a utilities regulator's jurisdiction? The specific legal question in *ATCO* was whether the Alberta Energy Board had the power to allocate a portion of the net gain on the sale of the utility to the rate-paying customers. The City of Calgary argued that the Board had this jurisdiction under two open-ended provisions of the Board's enabling statute. By way of FortisBC's analysis, the Supreme Court of Canada could have applied the Presumption of Stability in its analysis, as the provisions at issue did not change the prevailing law with “irresistible clearness” to authorize the power to allocate proceeds from the sale of a utility's asset. However, the Supreme Court of Canada did not refer to or apply the Presumption of Stability in its analysis. More specifically, it did not discuss the Presumption of Stability as a constraint on the doctrine of necessary implication. Rather, it engaged in a

¹⁷⁶ *Gendron v Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 SCR 1298 (“*Gendron*”); *Athabasca Chipewyan First Nation v British Columbia*, 2001 ABCA 112, at para 19.

¹⁷⁷ *Rawluk v Rawluk*, 1990 CanLII 152 (SCC), p. 97.

¹⁷⁸ *Gendron*, *supra* note 176.

¹⁷⁹ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140, (“*ATCO*”) at para 35.

detailed analysis of the Board's implicit powers, citing with approval the following passage from *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC), [1989] 1 S.C.R. 1722, at p. 1756:

The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.

The Supreme Court of Canada continued at paragraph 51 of *ATCO*:

The mandate of this Court is to determine and apply the intention of the legislature (*Bell ExpressVu*, at para. 62) without crossing the line between judicial interpretation and legislative drafting (see *R. v. McIntosh*, 1995 CanLII 124 (SCC), [1995] 1 S.C.R. 686, at para. 26; *Bristol-Myers Squibb Co.*, at para. 174). That being said, this rule allows for the application of the “doctrine of jurisdiction by necessary implication”; the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (see *Brown*, at p. 2-16.2; *Bell Canada*, at p. 1756). Canadian courts have in the past applied the doctrine to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate:

When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.

Re Dow Chemical Canada Inc. and Union Gas Ltd. (1982), 1982 CanLII 3238 (ON SCDC), 141 D.L.R. (3d) 641 (Ont. H.C.), at pp. 658-59, *aff'd* (1983), 1983 CanLII 1879 (ON CA), 42 O.R. (2d) 731 (C.A.) (see also *Interprovincial Pipe Line Ltd. v. National Energy Board*, [1978] 1 F.C. 601 (C.A.); *Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission*, [1983] 1 F.C. 182 (C.A.), *aff'd* 1985 CanLII 63 (SCC), [1985] 1 S.C.R. 174).

In summary, the Commission should give little weight to FortisBC's position on the doctrine of necessary implication, as it directly contradicts the jurisdictional analysis set out by the Supreme Court of Canada in *ATCO*.

- Fourth, FortisBC cites no precedent for applying its extreme formulation of the Presumption of Stability to decide the jurisdiction of a utilities regulator, even though under FortisBC's formulation, the Presumption of Stability should be

generally applicable if it is applicable at all. Neither the Ontario Superior Court of Justice nor the Ontario Court of Appeal referred to or applied the Presumption of Stability in their respective analyses, even though s.36 is an open-ended provision and does not explicitly authorize the Ontario Energy Board to consider “ability to pay.” The Manitoba Public Energy Board also did not refer to or apply the Presumption of Stability, even though its enabling statutes do not explicitly authorize it to consider “ability to pay.” Rather, like in this case, the statutory provisions at issue in the Ontario and Manitoba cases grant discretion, not explicit directions.

In response to paragraph 8, BCOAPO does not consider ss.23 and 38 as one possible source of jurisdiction and s.60(1)(b.1) as a separate possible source of jurisdiction. Rather, BCOAPO analyzes ss. 23, 38, and 60(1)(b.1) holistically and views the Commission’s jurisdiction as arising from the interaction of these provisions with other contextual considerations. In other words, BCOAPO analyzes these provisions in accordance with the Modern Approach to statutory interpretation.

In response to paragraphs 9 and 12-15, BCOAPO reiterates that it does not view ss.23 and 38 as a source of the Commission’s rate setting jurisdiction in isolation from the rest of the statute and other contextual considerations. Sections 23 and 38 are clearly the source of the Commission’s overarching jurisdiction over utilities. The Commission’s specific rate setting jurisdiction arises from its general supervision over utilities in the public interest. In other words, if the Commission was not authorized to supervise, or regulate, utilities, it would not have the power to set rates. The public interest component of Sections 23 and 38 must therefore inform the Commission’s rate setting jurisdiction.

In response to paragraphs 13-14, the Supreme Court of Canada in *ATCO* said that in order to impute the particular jurisdiction at issue in that case, there must be evidence that “the exercise of that power is a practical necessity for the regulatory body to accomplish the objects prescribed by the legislature.” However, at paragraph 73, the Supreme Court of Canada cited *Re Consumers’ Gas Co.*, E.B.R.O. 410-II/411-II/412-II, March 23, 1987, where the Ontario Energy Board enumerated a more nuanced range of circumstances where the doctrine of necessary implication may be applied, including when “the mandate of the Board is sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction.” Further, BCOAPO emphasizes that the purposes of the requirement that a sale must be approved by the Alberta Energy Board, as identified by the Supreme Court of Canada in *ATCO*, are narrower than the purposes for the Commission’s jurisdiction over rate setting. More specifically, there is a broader public interest component to rate setting than deciding whether to approve the sale of utility assets. The public interest component to rate setting underlies the overarching requirement to set just and reasonable rates, and is readily apparent in specific powers such as the Commission’s jurisdiction to prevent rate shock.

In response to paragraphs 10-11, BCOAPO has already demonstrated that FortisBC's extreme formulation of the Presumption of Stability is not supported in the case law and that a modification to the prevailing law can be achieved by implication.

In response to paragraph 16, BCOAPO does not suggest that its proposals would solve every customer's energy needs; but rather, that customers below an income threshold as low as LICO would have difficulty paying their bills and would benefit from a comprehensive bill affordability strategy. While it is obviously true that different family types experience poverty differently, this is no reason not to pursue mitigating measures such as BCOAPO's proposals.

In response to paragraphs 17-18, FortisBC interprets s.60 (1)(b.1) in isolation from the rest of the statute and other contextual considerations—in other words, contrary to the Modern Approach. As stated above, the Commission's rate setting jurisdiction is grounded in the Commission's overarching jurisdiction to supervise public utilities in the public interest. The public interest function therefore flows down to its rate-setting jurisdiction.

In response to paragraph 18, the determination of whether a rate is "unduly preferential" is a question of mixed fact and law, as is the determination of whether a rate constitutes a privilege "not regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description." FortisBC asserts that BCOAPO's proposals would be "unduly preferential" and constitute a "privilege that is not uniformly offered" without engaging in analysis that applies its legal interpretations to the evidence in this proceeding.

In response to paragraph 20, BCOAPO's position is not that the Commission has the jurisdiction to approve an unduly discriminatory rate, but that the phrase "due regard" suggests that the Commission may engage in a balancing exercise when setting rates, such as where there are competing considerations. Further, all of the considerations set out in s.60(1)(b) are subjective in their application and in that sense do not set out absolute constraints on the Commission's rate setting jurisdiction.

In response to paragraph 21, FortisBC asserts that BCOAPO's interpretation of s. 60(1)(b.1) is "strained" while not addressing the strong parallels between s.60(1)(b.1) and s.36 of the *Ontario Energy Board Act*. The Ontario Superior Court of Justice and the Ontario Court of Appeal did not take issue with the clarity of the language in s.36 when deciding that s.36 gave the Ontario Energy Board the jurisdiction to consider "ability to pay."

In response to paragraph 22, BCOAPO agrees that there have been numerous issues with establishing low income rates from a regulatory perspective and that low income rates may, in some cases, constitute undue discrimination. However, this observation does not necessarily imply that in this case, BCOAPO's proposed low income rate constitutes undue discrimination. Whether a rate constitutes undue discrimination is a question of mixed fact and law and must be decided on a case by case basis. The

difficulty of implementing low income rates in other jurisdictions is by no means determinative of the issue. Further, BCOAPO submits that case law from the United States should be treated with utmost caution, as the legal contexts remain quite different.

In response to paragraph 23, the decision *In re Washington Gas Light Co.* is distinguishable from this proceeding because of the issues with the evidentiary record in that proceeding. Given that the question of whether a rate constitutes undue discrimination is a question of mixed fact and law, it is inappropriate to view the Public Service Commission of the District of Columbia's conclusions in isolation from each other. The DCPSC's decision, which was never challenged in court, for example, stands in sharp contrast to the Massachusetts Supreme Court decision in *Hoechst v. Department of Public Utilities*,¹⁸⁰ in which various institutional and business customers of the electric company challenged an order of the Department of Public Utilities approving a special rate for elderly poor customers. The Massachusetts Supreme Court held that: "While cost of service is a well-recognized basis for utility rate structures, it need not be the sole criterion. *Monsanto Co. v. Department of Pub. Utils.*, --- Mass. ---, - -- [FND], 397 N.E.2d 1110 (1979), and cases cited." The Massachusetts Supreme Court held that "It was not irrational discrimination to exempt the first 384 kwh of monthly residential electricity usage from a rate increase on the ground that this segment of residential usage had not contributed significantly to the growth in peak-load demand. *Boston Edison Co. v. Department of Pub. Utils.*, --- Mass., [FNE], 375 N.E.2d 305, appeal dismissed, 439 U.S. 921, 99 S.Ct. 301, 58 L.Ed.2d 314 (1978)."¹⁸¹ More broadly, BCOAPO provided a comprehensive report, prepared for Hydro Quebec, in which proposals for a specific low income rate structured similarly to ESUB, have been adopted in the United States, Europe, and in various Commonwealth countries such as the United Kingdom, Australia, and South Africa.¹⁸² Irrespective of these decisions, BCOAPO has provided a comprehensive review of the jurisdictional basis for ESUB based in Canadian law.

In response to paragraphs 24-27, BCOAPO has already generally addressed the reasons that *Nova Scotia Legal Aid Service v Nova Scotia Power Inc.* is distinguishable. BCOAPO has also adopted MoveUp's analysis about this case from MoveUp's submissions dated October 11, 2016.

In response to paragraph 28, BCOAPO disagrees with FortisBC that *Advocacy Centre for Tenants-Ontario v Ontario Energy Board* is distinguishable:

- While the Ontario Superior Court of Justice considered the factor that s.36 replaced s.19 during its statutory interpretation analysis, this factor was not

¹⁸⁰ 399 N.E.2d 1 (1980).

¹⁸¹ 399 N.E.2d at 5.

¹⁸² Exhibit C2-18, BCOAPO Response to BCSEA 4.2, at Part 4 (Colton (2008). Inverted Block Tariffs and Universal Lifeline Rates: Their Use and Usability for Delivering Low-Income Electric Rate Relief, discussing programs in the United States, Australia, Hungary, Portugal, Belgium, the United Kingdom, South Africa, Colombia and Argentina).

determinative and the Ontario Superior Court of Justice did not indicate that it gave this factor special weight in reaching its conclusions. BCOAPO has already provided an overview of the wide range of factors considered by the Ontario Superior Court of Justice in BCOAPO's Final Submissions dated September 24, 2016.

- While BCOAPO agrees that the *OEBA* does not contain language prohibiting “preferential rates,” the *OEBA* also does not contain language prohibiting “discriminatory rates.” It can be assumed that while the terms preferential and discriminatory do not appear in the *OEBA*, the Ontario Energy Board applies the fundamental principles against unduly discriminatory and unduly preferential rates and does not have the jurisdiction to enact unduly discriminatory and unduly preferential rates.
- See also BCOAPO's response above on page 45 above to paragraph 191 of CEC's Final Argument.

5. CONCLUSION

BCOAPO appreciates the opportunity to provide this response to BC Hydro and the registered interveners.

All of which is respectfully submitted this 24th day of October, 2016

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