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January 4, 2018

BY EMAIL

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Patrick Wruck
Commission Secretary and Manager, Regulatory Services

Dear Sirs/Mesdames:

Re: Project No. 1598929
ICBC 2017 Revenue Requirements Application
Toward Responsible Educated Attentive Driving (TREAD)
Final Argument

Enclosed for filing in the above-captioned proceeding is TREAD's Final Argument dated January 4, 2018.

Yours truly,

Fred J. Weisberg
Barrister & Solicitor
Weisberg Law Corporation
Counsel to TREAD

BRITISH COLUMBIA UTILITIES COMMISSION IN THE MATTER OF THE

UTILITIES COMMISSION ACT
R.S.B.C. 1996, CHAPTER 473, as amended

and the

INSURANCE CORPORATION ACT
R.S.B.C. 1996, Chapter 228, as amended

Insurance Corporation of British Columbia Revenue Requirements for Universal Compulsory Automobile Insurance effective November 1, 2017

FINAL ARGUMENT OF
Toward Responsible Educated Attentive Driving (TREAD)

January 4, 2018

PART ONE: INTRODUCTION

1. The pace of continuing cost escalation for ICBC's Basic insurance product is alarming.

> "BC's auto insurance system is facing unprecedented challenges. Premiums collected by ICBC today are higher than other provinces that have shifted away from a predominantly litigation-based model (they are the second highest in Canada), yet they are not high enough to cover the true cost of paying claims. More accidents are occurring on BC's roads, and the number and average settlement of claims are increasing. Only recent government intervention has protected BC drivers from the currently required 15%–20% price increases. This rate protection has eroded ICBC's financial situation to a point where it is not sustainable. The average driver in BC may need to pay almost $2,000 in annual total premiums for auto insurance by 2019, an increase of 30% over today's rates, assuming current trends persist, the objective is to have ICBC's rates cover its costs, and significant reform is not undertaken."[1]

2. ICBC's Basic insurance customers face the daunting prospect that in just two years the premiums they pay may fall more than $1 billion short of covering expected costs for a single year:

> "If premiums are kept at current rate levels, with only inflationary increases and growth in the number of vehicles in line with recent averages, ***we estimate this will result in a rate gap of over $1.1 billion in 2019***.
>
> The above results from our analysis make it clear that a re-design of the current Basic insurance product is required as the system is not performing well against ***any*** of the guiding principles."[2] (emphasis added)

3. As ICBC has pointed out, rising claims costs is not just an ICBC problem. TREAD recognises that all North American auto insurers have faced, and are facing, the challenge of rising loss costs, fraud, and other factors that, together, have combined to drive auto insurance rates skyward.

4. TREAD observes that while ICBC's loss trends are generally consistent with other North American jurisdictions, there are instances in ICBC's 2017 Revenue Requirements Application (2017 RRA) where the company's experience appears

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[1] Independent Review Report, p. 8, PDF page 14, http://www.icbc.com/about-icbc/company-info/Documents/Affordable-and-Effective-AutoInsurance-Report.pdf ; TREAD 86.1.

[2] Independent Review Report, p. 82, PDF page 88; TREAD 72.1,72.2.

divergent from peer insurers. The single round of Information Requests in this proceeding[3] revealed instances where ICBC's cost experience appears divergent from the broader auto insurance industry in North America. While there are certainly differences to be expected due to the market structure in BC, and certain other factors, some of the divergences seem unusual, and warrant further examination.[4]

5. Although other motor vehicle insurers in Canada and the United States face many of the same types of cost pressures experienced in British Columbia, ICBC appears to be significantly lagging in its responses to those financial challenges.

> "While other jurisdictions both in North America and abroad have also experienced increased claims costs, many have undertaken major changes to their auto insurance schemes to mitigate pressure on rates. British Columbia has been able to maintain essentially the same auto insurance scheme since 1973 but increasing financial losses and a limited public appetite for higher premiums bring into question whether this system is sustainable without significant reform or direct government financial support on a go-forward basis."[5]

6. ICBC should also provide better documentation supporting its expenditures.[6] For example, although ICBC expends considerable money on education and enforcement programs, the company was not able to provide documentation, specifically showing the returns on these expenditures.[7] ICBC handles nearly $4 billion paid each year by Basic insurance customers in British Columbia.[8] Based on the company's responses in the single round of Information Requests, it is not clear the extent to which ICBC actually prepares and retains formal business cases to support the allocation of its expenditures.[9]

7. ICBC Basic insurance rates are already the second highest in Canada.[10] Certainly, British Columbia has terrain, population distribution, and other factors that differentiate the province from other parts of Canada, and states in the USA. TREAD had intended to further explore whether ICBC cost trends are consistent with comparable insurers, but was stymied by the abbreviated 2017 RRA Regulatory

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[3] On December 11, 2017, the Commission issued Order G-180-17, establishing a second round of Information Requests. However, the second round was subsequently eliminated by Commission Order G-172-17A, issued December 19, 2017, that truncated the Regulatory Timetable.

[4] B-2, TREAD 21.2.

[5] Independent Review Report, p. 1, PDF page 7; TREAD 83.9.

[6] B-2, TREAD 53.1; B-2, BCUC 66.5.

[7] B-2, TREAD 53.1; B-2, BCUC 66.5.

[8] B-1, ICBC 2017 Revenue Requirements Application, p. 2-4

[9] B-2, TREAD 53.1, 53.2; B-2, BCUC 66.5.

[10] Independent Review Report, p.8, PDF page 14; TREAD 86.2.

Timetable. In light of successive, significant annual rate increases, and the apparent certainty of further significant rate increases in the next few years, TREAD considers that any adverse deviation of ICBC cost trends from comparable peer insurers should be fully understood by the corporation. Under those conditions, and given that ICBC is a monopoly service provider, Basic insurance customers require and deserve to see that the corporation is keeping competitive with other insurers in combatting cost escalations to the maximum extent possible.

PART TWO: PROPOSED BASIC INSURANCE RATE CHANGE IS A *FAIT ACCOMPLI*

A. ICBC MUST COMPLY WITH THE LEGISLATED RATE CAP

8. A 6.4% rate increase for PY 2017[11] is unfortunate but unavoidable. ICBC's proposed 6.4% rate increase for Basic insurance is the maximum permissible under Special Direction IC2 to the British Columbia Utilities Commission (*Special Direction IC2*) – falling at the upper end of the allowable rate change band of +/- 1.5 percentage points of the PY 2016 rate change of 4.9% approved by the Commission. Simply put, the law in BC would not allow ICBC to raise its Basic insurance rates any higher than 6.4% for PY 2017.

9. It is crucial to recognize that ICBC's evidence indicates that a rate increase much higher than 6.4% is required to cover ICBC's anticipated costs for year. According to ICBC, rates actually would need to increase 20.0% just to cover anticipated costs in PY 2017.[12]

10. The Independent Review Report anticipates a more sobering set of required future rate increases. According to Ernst & Young, ICBC will require total rate increases of almost 30% by 2019, and over 40% by 2021.[13] TREAD notes that if the predicted rates increases by 2019 turn out to be correct, Government may need to increase the allowable rate change band in the *Special Direction IC2* rate smoothing mechanism.

11. The French phrase *fait accompli* perfectly suits the circumstance facing the Commission and ICBC's customers. The 6.4% rate increase for PY 2017 was decided by Government and ICBC before those most directly affected had the opportunity to complete the review process ordered by the Commission in its Regulatory Timetable issued December 19, 2017 and amended December 20, 2017. The Commission, and therefore ICBC's Basic insurance customers as well, are left with no option but to accept the 6.4% rate increase for PY 2017 as inevitable.

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[11] PY indicates ICBC's Policy Year – or financial year – running from November 1 to October 31 the following year.
[12] B-1, ICBC 2017 Revenue Requirements Application, p. 2-1.
[13] Independent Review Report, p. 120, PDF page 126.

12. The effect of *Special Direction IC2*[14] in capping the PY2017 rate increase appears to be a boon to BC vehicle owners and operators, but it comes at a high price. ICBC's costs are not reduced. Recovery of the rate deficit[15] is simply postponed, not avoided. Costs that are not covered in PY 2017 rates will be carried forward and will need to be recovered in subsequent years – adding significant additional upward pressure on future rates.

B. UNAFFORDABLE RATES ARE NOT JUST AND REASONABLE

13. The *Insurance Corporation Act* requires that rates be just and reasonable.

14. The Independent Review Report highlights the need for affordability, observing that ICBC premiums today are the second-highest in Canada, yet still insufficient to cover claims costs.[16] Ernst & Young estimates the average driver in BC will face a 30% rate increase over today's rates by 2019, assuming current trends persist, ICBC's rates cover its costs, and significant reform is not undertaken.[17] The Independent Review Report observes that "by the measure of affordability alone, BC's auto insurance system faces significant pressure." [18] By ICBC's own admission, the current situation cannot be sustained. [19]

14. TREAD submits that affordability should be an important consideration in the Commission's determination of whether ICBC's rates are just and reasonable. That perspective is echoed in the Independent Review Report. [20]

16. The prospect of BC drivers paying 30% more for ICBC automobile insurance by 2019 should raise red flags concerning affordability and the questionable sustainability of successive, significant rate increases. For the sake of responsible BC drivers, TREAD urges the Commission to direct and/or encourage ICBC to give high priority to finding ways to solve the revenue deficiency problem, but not by simply requiring all drivers to pay 30% more. If some drivers are to be priced-out of the market (or more precisely, priced-off of BC roads), TREAD submits it should be the irresponsible drivers who are causing the crashes that are increasing ICBC's costs who should be priced-out. In contrast, ICBC's current approach appears likely to price-out many good, responsible drivers, who simply are having trouble coping with rapidly escalating BASIC rates. As average BC incomes are only increasing by

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[14] *Special Direction IC2*, s.3(1)(c).
[15] ICBC uses the term "rate deficit" in the Application, page 2-2; in the Application, page 6-35 ICBC uses the phrase "premium revenues insufficient to cover the increase in claims costs"; ICBC's 2016-17 Annual Service Plan Report uses the term "shortfall" at p.71.
[16] Independent Review Report, p.15, PDF page 21.
[17] Independent Review Report, p. 15, PDF page 21.
[18] Independent Review Report, p. 15, PDF page 21.
[19] B-1, ICBC 2017 Revenue Requirements Application, Transmittal Letter, p.1.
[20] Independent Review Report, p. 1, PDF page 7, Footnote #3 and p. 7, PDF page 13.

1.3% per year[21], many will struggle to keep pace with ICBC Basic rate increases - whether they are 6.4% this year or a cumulative 30% or more within two years.

17. Going forward, the question is what are the best remedies to alleviate the rate deficit. ICBC's submissions, most notably its effort to prevent any Commission or public consideration of the Independent Review Report for at least one year[22], reveal an approach likely to significantly delay much-needed action to address the enormous revenue deficiency. Any delay will only make the needed remedies more painful to implement.

18. Delaying the introduction of appropriate solutions risks further unjust subsidization of irresponsible drivers who create the most costs by responsible drivers who create the least costs.

19. On the revenue side, TREAD sees two potential solutions: raise rates for all Basic insurance customers or collect proportionately more revenue from irresponsible drivers who cause the most crashes or otherwise drive up claims costs. TREAD urges the Commission and ICBC to embrace the latter, as it is consistent with fundamental regulatory and economic principles - particularly regarding the "just" dimension of rates by appropriately reflecting cost causation.

C. ICBC HAS NOT CONSISTENTLY APPLIED ACCEPTED ACTUARIAL PRACTICE

20. ICBC suggests that so long as rates are actuarially-determined, that is sufficient to deem them "just and reasonable."[23] Further, some ICBC statements appear to demonstrate the company's belief that if some British Columbians get priced-out of the automobile insurance market, that would actually help reduce congestion and thereby reduce loss costs.[24] A Dickensian Scrooge might embrace that concept by noting that those who can’t afford their auto insurance should simply get off the road and thereby decrease the “surplus” driving population.

21. That view is contrary to the foundational premise of ICBC – that compulsory insurance should be delivered at a price that British Columbian drivers can afford. Accepting that some qualified drivers may be excluded from BC’s roads simply due to blanket market pricing does not accord with that fundamental principle of automobile insurance in BC.[25]

[21] Based on BC median income growth, 2008 to 2015, as reported by StatsCan Table 111-0008. http://www5.statcan.gc.ca/cansim/a26?id=1110008
[22] B-1, p. iii, PDF page 14.
[23] B-2, TREAD 30.1.
[24] B-2, TREAD 9.2.
[25] Independent Review Report, p. 15, PDF page 21.

22. ICBC's evidence and submissions are replete with references to how accepted actuarial practice shapes and limits the corporation's approach to and perspective on revenue requirements.[26] The problem is that ICBC has established a practice of funding loss cost increases simply by blanket rate increases. TREAD represents responsible drivers who are not contributing to ICBC's burgeoning cost increases. TREAD's persisting concern that the blanket rate increase approach ICBC practices has ensconced cross-subsidization of poor drivers by good drivers that deserves close scrutiny - if only to demonstrate that the blanket increase approach is, in fact, actuarially sound. This apparent inconsistency – repeatedly insisting that accepted actuarial practice is the chief driver of many considerations related to revenue requirements, yet seeming to ignore that accepted actuarial practice would also require that multiple changes and developments over the past decade be addressed in a rate design filing – is concerning. If accepted actuarial practice is not employed consistently for all appropriate purposes, it creates some doubt as to whether ICBC applies such practice too selectively.

D. ICBC's DELAY AND INACTION EXACERBATE THE PROPOSED PY 2017 RATE INCREASE AND INEVITABLE FUTURE RATE INCREASES

23. ICBC has stated:

> "The magnitude of the rate change to cover costs means that the indicated rate increase will be set at the legislative cap. Lowering the rate change below 6.4% would require the implementation of further mitigation strategies that will achieve at least $415 million dollars of savings for the 2017 policy year. ICBC's evidence is that it is ***unaware of any initiatives or combination of initiatives that could be implemented in the time needed*** to achieve this level of savings for policy year 2017."[27] (emphasis added)

24. That statement suggests that ICBC could and should have begun implementation of a number of initiatives earlier, so that they would have had a chance of achieving the necessary level of savings for PY 2017.

25. TREAD submits that the increased High-value Vehicle Surcharge is a specific example of a revenue opportunity available to ICBC, but that was (until last summer) overlooked and under-collected. "The cost to implement the High-value Vehicle Charge was minimal and more than offset by the increase in premium for the owners of high- value vehicles." [28] The High-Value Vehicle Surcharge is a clear example of a revenue opportunity too long ignored, which required government direction to prompt ICBC to act.

[26] For example, see ICBC Final Submissions, p. 2, paras. 5, 6, 7
[27] ICBC Final Submissions, p.5, para 14.
[28] Exhibit B-1, page 9-2, PDF page 914.

26. TREAD submits that the reflects High-value Vehicle Surcharge reflects a direct, unmistakable connection between those vehicles' claims costs and a very specific customer group. There is no apparent overhead factor that requires spreading across any other customer group - there are simply repair costs directly associated with a specific class of vehicles. The High-value Vehicle Surcharge is a mechanism for better revenue management, in the sense of directly recovering the funds needed to cover a well-defined set of expenses from the exact customer group to which it stems. The increase in the HVV Surcharge reflects better adherence to the principle of cost causation, by more fairly allocating the costs to those causing them while avoiding undue discrimination.

27. ICBC is glib concerning the prospect of collecting additional premium from HVV insureds.[29] Heightened public awareness of how ICBC has permitted and perpetuated an arrangement under which owners of expensive vehicles (i.e. over $150,00)) enjoyed significant subsidies from other, less economically-advantaged British Columbians, will likely bring more scrutiny of whether the HVV Surcharge is actuarially appropriate and fully reflects the additional costs of repairing/replacing very expensive vehicles.

28. Every delayed or missed revenue opportunity, such as the HVV Surcharge, exacerbates the impact of successive across-the-board rate increases. ICBC's preliminary request to exclude consideration of the Independent Review Report from the 2017 RRA proceeding[30] would have had the effect of curtailing public discussion of important issues facing ICBC.

29. ICBC stated:

> "The time period allowing for this dialogue followed by an implementation period would leave little or no time for any initiatives to have a significant enough impact to change the proposed 6.4% rate increase for the 2017 policy year that is the subject of this Application. The Commission will have the opportunity to consider the impact of any such initiatives in a future Revenue Requirements Application (RRA) once those decisions have been made."

30. In light of the truncated Regulatory Timetable for the 2017 RRA, ICBC's customers will likely have no opportunity in a Commission proceeding to address the many issues facing ICBC until late 2018 or beyond.

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[29] TREAD 18.1, 69.1
[30] Exhibit B-1, p. iii, PDF page 14.

PART THREE: ICBC'S PROPOSED CHANGES TO PERFORMANCE MEASURES ARE NOT APPROPRIATE AT THIS TIME

31. ICBC proposes terminating the reporting of metrics the corporation deems confusing or no longer meaningful, but has not demonstrated that ceasing reporting on the metrics proposed for discontinuation would actually save the corporation money.

32. ICBC stated:

> "Some of these metrics (i.e., injury paid severity, bodily injury (BI) reported frequency, and injured person rate) have been a source of confusion. They have a superficial comparability to claims statistics in the actuarial rate level indication analysis, whereas the relationship is in fact more complex."[31]

33. TREAD disagrees with the above statement. ICBC is a public corporation, owned by the people of British Columbia. Any information the people of BC, as the corporation's shareholder, consider useful should be (or, in this instance, should remain) available. It is becoming increasingly apparent that ICBC would like to limit any examination of its operational data to those with suitable actuarial credentials. "Explaining these complex relationships takes significant time and effort on the part of actuarial and other staff, and even then, it is difficult to make the nuances understood by non-actuaries."[32] This perspective ignores the fact that ICBC is also guided by public policy and marketing considerations, that may at times directly conflict with actuarial considerations.

34. As ICBC points out in reply to BCOAPO 6.4, "Except for the discontinuation of the Customer Approval Index (CAI), ICBC is not able to quantify the cost savings to ICBC or the associated rate impact in the event that ICBC's proposal on performance measures and reporting is approved."[33] Further, the one report whose discontinuance cost-saving ICBC did provide a calculation for, the CAI, would reduce company costs by only $18,000.[34]

35. TREAD believes ICBC should continue reporting on any reports that stakeholders (particularly, the Commission) indicate they value, until such time as the stakeholders express satisfaction that the "replacement reports" indeed cover all the items addressed in the existing reports.

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[31] ICBC Final Submissions, p.7
[32] B-2, BCOAPO, 6.1
[33] ICBC Final, p.7; B-2, TREAD 74.1; B-2, BCOAPO 6.4
[34] B-2, BCOAPO 6.4.

A. ADJUSTMENTS TO THE PRESENTATION OF PERFORMANCE MEASURES

36. ICBC asserts that the proposed changes will, among other things, "…ensure that the performance measures are meaningful to ICBC's business." In light of the forthcoming consideration of extensive analysis and recommendations in the Independent Review Report, and the apparent scope of the Government Review of ICBC, it seems premature to make assumptions about what performance measures will be meaningful to ICBC's business going forward. One would hope and expect that the Government Review process will prompt real changes, and surely the appropriate time to revamp performance measures is after that process is completed and actions have been implemented. TREAD submits that the Commission should ensure that ICBC doesn't change performance measures now, only to be followed within a year or so by further changes likely to result from the Government Review.

37. The corporation's view of performance measures is conveyed in this statement:

> "ICBC believes that the purpose of performance measures is to provide relevant information to assess whether its provision of Basic insurance is adequate, efficient, just, and reasonable. ICBC has proposed measures that focus on the financial health of the Basic insurance business, on the just and reasonable provision of ICBC's services from a customer point of view, and on the efficiency of ICBC's integrated provision of insurance services."[35]

38. TREAD submits that for regulatory purposes the Commission should determine what information it deems necessary and appropriate for measuring performance - rather than ICBC telling the Commission what information it needs or should consider suitable.

B. ICBC SHOULD MAINTAIN CURRENT PERFORMANCE MEASURES UNTIL COMPLETION OF THE GOVERNMENT REVIEW

39. TREAD observes that Appendix 1 to the Independent Review Report identified auto insurance performance metrics used in other jurisdictions. As the Ernst & Young report is currently under Review, including the performance metrics, TREAD submits that there is no value in making changes to ICBC's reporting for the time-being. Doing so would most likely lead to confusion by preventing or undermining comparison of the same performance measures for PY 2017 to previous years.

PART FOUR: TP REPORTING

40. TREAD accepts that with TP now complete it appears appropriate to discontinue reporting on the re-allocation of TP costs and reporting on transitional period. operational metrics related to Claims Transformation.

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[35] B-2, BCUC IR 57.1.

41. However, given the claimed annual benefits from TP of $157 million at the end of 2016 - $50 million more than ICBC originally forecast in 2012 – it would seem worthwhile to continue measuring and reporting on TP benefits for a few more years to ensure that the benefits continue to be realized.[36]

PART FIVE: OPERATIONAL REPORTING ON CLAIMS AND ROAD SAFETY

42. TREAD accepts introduction of the Legal Representation Conversion Rate, but submits that it would be prudent to continue the existing metric for one year to enable a comparison to determine that the former is indeed more refined as ICBC asserts.

43. TREAD accepts ICBC's proposal to monitor the Crash Frequency as the primary statistic for its Road safety programs in preference to the crash rate.

PART SIX: CONCLUSION AND ORDER SOUGHT

44. While TREAD acknowledges that operation of *Special Direction IC2* makes the 6.4% rate increase for PY 2017 a *fait accompli*, TREAD submits that some value can and should be extracted from the regulatory process that preceded the abrupt abbreviation of the Commission's Regulatory Timetable for the 2017 RRA. TREAD submits that in the absence of any apparent rate relief – stabilization or reduction of rates – in the foreseeable future, the Commission should provide direction, guidance and encouragement for ICBC to aggressively pursue an available path to some rate relief for most of ICBC's customers.

45. ICBC's Board Chair Barry Penner has publicly identified that path by stating "We believe that drivers who cause crashes should pay more than those who don't."[37]

46. TREAD agrees with Mr. Penner's statement. It is long past due to ensure that responsible, educated and attentive drivers in BC are provided some relief from the steeply escalating costs caused by irresponsible, inattentive drivers.

47. It is clear that devising a set plan for addressing the growing revenue deficiency is needed. TREAD believes the Independent Review Report was commissioned by ICBC's Board exactly for that purpose, and looks forward to substantial positive change resulting from the forthcoming Government Review.

48. As discussed above, the Government Review of ICBC's insurance scheme and operations makes it a most inopportune time to muddy the waters by changing or discontinuing performance measures. Clearly, the appropriate time to consider

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[36] B-2, BCUC IR 65.3.
[37] TREAD C5-3, Submitted at Procedural Conference December 5, 2017 – Vancouver Sun Article.

such changes would be after the Government Review is completed, and ICBC's path forward is made clearer. Performance measures may indeed need to be changed or discontinued – but only after the value of those performance measures going forward is determined.

49. Effort directed at changing or discontinuing performance measures would be an unhelpful and unnecessary distraction at a crucial time when ICBC appears unable to effectively control costs or avoid successive, significant rate increases. Rearranging deck chairs on a foundering ship has never proven a good strategy – nor is it here. In light of the Independent Review Report concluding that ICBC's Basic insurance product is unsustainable, ICBC clearly has much larger and more pressing issues to attend to than tweaking performance measures.[38]

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED: January 4, 2018

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[38] Independent Review Report, p. 17, PDF page 23; TREAD 86.3.