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March 17, 2017

DELIVERED

British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver BC V6Z 2N3

Attention: Ms. Erica Hamilton  
Commission Secretary

Dear Ms. Hamilton:

**British Columbia Old Age Pensioners' Organization, *et al.* (BCOAPO)  
Application for Reconsideration and Variance of Order G-5-17 in the matter of the BC  
Hydro 2015 Rate Design Application (BCOAPO Application)**

This submission is made on behalf of BC Hydro and further to the Commission's procedural order of February 24, 2017 (Exhibit A-2) where the Commission established phase one of the reconsideration process for the BCOAPO Application.

In Exhibit A-2 the Commission advised that phase one of the BCOAPO Application would involve consideration of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?

Set out below are the phase one submissions of BC Hydro which will address each of the Commission's questions.

In summary, it is the position of BC Hydro that the Commission should dismiss the BCOAPO Application because the BCOAPO has not substantiated an error of law on a *prima facie* basis sufficient to warrant full reconsideration by the Commission under phase two, and because any such error if substantiated would not have significant material implications.

## SHOULD THERE BE A RECONSIDERATION?

In answering this question, the Commission outlined the following criteria that will be applied in its determination as to whether a reasonable basis exists to proceed with a reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the 2015 RDA Decision;
- a basic principle was not raised in the original proceedings;
- a new principle has arisen as a result of the 2015 RDA Decision; or
- there is other just cause to warrant a reconsideration.<sup>1</sup>

The grounds for review raised by the BCOAPO are alleged “errors of fact and law with respect to the Commission’s jurisdiction.”<sup>2</sup> The Commission states that where the issues raised in an application for reconsideration are alleged errors, the following two additional requirements must be met to determine whether the reconsideration application should proceed to the second phase to be considered on its merits:

- The claim or error is substantiated on a *prima facie* basis; and
- The error has significant material implications.<sup>3</sup>

The BCOAPO has the burden of meeting this test.

At paragraph 3 of the BCOAPO Application, the BCOAPO states that the Commission erred in law in finding sections 23, 38, and 58-61 of the UCA<sup>4</sup> do not provide the Commission with jurisdiction to order low-income rates. The BCOAPO then raise the following “specific errors” that it alleges the Commission made in law and in fact that resulted in this alleged overarching error:

- (a) in artificially bifurcating its analysis on undue discrimination into personal characteristics and a “cost of service rationale”;
- (b) as a result of (a), failing to consider socioeconomic evidence relevant to the determination of undue discrimination;
- (c) in applying the wrong test to its interpretation of sections 23, 38, and 58 to 61 of the Act;
- (d) in finding a lack of legislative intent to provide the Commission with the jurisdiction to order low-income rates; and

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<sup>1</sup> Exhibit A-2, p 2.

<sup>2</sup> BCOAPO Application, para 9. BC Hydro notes that the BCOAPO Application does not allege there has been a fundamental change in circumstances or facts, that a basic principle was not raised in the original proceedings or that a new principle was created as a result of the 2015 RDA Decision, as such, we do not address these criteria.

<sup>3</sup> Exhibit A-2, p 2.

<sup>4</sup> *Utilities Commission Act*, RSBC 1996, c 473.

- (e) misconstruing the regulatory regimes and relevant decisions in other Canadian jurisdictions.<sup>5</sup>

Before responding to the specific grounds alleged by the BCOAPO, BC Hydro has the following general comments that apply to the BCOAPO Application as a whole.

First, BC Hydro understands that despite alleging an error of fact and law, the overriding question the BCOAPO alleges was incorrectly addressed is a question of law involving primarily, statutory interpretation principles. As such, BC Hydro does not understand the BCOAPO to be challenging a finding of fact by the Commission and has no submissions in this regard.

Second, and as will be apparent in the submissions that follow, most of the BCOAPO Application reiterates arguments advanced during the hearing of the 2015 RDA, rather than on the identification of alleged errors in the Commission's decision. Reconsideration applications should not be opportunities to re-argue issues which were fully argued and which the Commission considered but did not accept. This is particularly true in the circumstances of Phase 1 of the 2015 RDA, where low-income rate issues were the subject of extensive pre-application consultation, a full evidentiary phase, and 3 rounds of argument (September 26, 2016; October 11, 2016; and October 24, 2016).

### ***The Commission's Jurisdictional Analysis with respect to Low-Income Rates***

The BCOAPO's first alleged error with respect to the Commission's consideration of its jurisdiction to approve low-income rates is that it "artificially bifurcated its analysis on undue discrimination into personal characteristics and a "cost of service rationale."<sup>6</sup>

Specifically, the BCOAPO allege that the Commission failed to consider the three rationales<sup>7</sup> that the BCOAPO now argues collectively provide the Commission with the jurisdiction to make rate distinctions on the basis of customers' income.<sup>8</sup>

The BCOAPO now argue that the "weight of each factor needs to be added to the other two factors to determine whether collectively the three justifications for discrimination can overcome the appellation of "undue" discrimination."<sup>9</sup> The BCOAPO argue that in failing to perform its analysis in this way, the Commission incorrectly concluded that the UCA does not provide the Commission with the jurisdiction to approve a low-income rate in the absence of an independent cost reflectivity or efficiency basis.

The argument that the three factors need to be considered collectively to properly assess whether the Commission has low-income rate jurisdiction seems to be the only argument in the BCOAPO Application that was not advanced in the argument phase of Phase 1 of the 2015 RDA. Regardless, the BCOAPO offer no legal basis - for example, judicial authorities, principles of statutory interpretation, and so on - for the proposition that its "holistic" analysis is both correct

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<sup>5</sup> BCOAPO Application, para 3.

<sup>6</sup> BCOAPO Application, para 11(a) and section A.

<sup>7</sup> Specifically, ability-to-pay (affordability), cost reflectivity and efficiency.

<sup>8</sup> BCOAPO Application, paras 12 and 14.

<sup>9</sup> BCOAPO Application, para 15.

and preferred to the analysis that the Commission did undertake. Importantly, the BCOAPO Application offers no legal basis upon which the Commission could conclude, as a matter of law, that a consideration that by itself is not legally relevant in a rate-setting context (ability to pay) becomes relevant when it is considered "holistically" with other legally relevant factors (cost reflectivity and efficiency). Finally, the BCOAPO offer no legal basis for the proposition that the analysis the Commission did perform with respect to the review of its jurisdiction was incorrect.

The Commission's interpretation of the UCA and its consideration of its jurisdiction to approve low-income rates is found in section 7.0 of the 2015 RDA Decision. The Commission begins its jurisdictional analysis by, correctly, considering whether it has the jurisdiction to determine and set low-income rates in the absence of a cost of service (i.e. cost reflectivity and/or efficiency) rationale. After performing this analysis, the Commission then goes on to consider the specific low-income proposals put forward by the BCOAPO in the RDA proceeding to determine whether they have a regulatory justification.<sup>10</sup> Contrary to the BCOAPO's assertion, BC Hydro submits that the Commission was correct to approach its analysis of the applicable legislative framework in this way and to consider, as a threshold issue of jurisdiction, whether the UCA provides it with the jurisdiction to set rates based on ability to pay.

In particular, the Commission appropriately engaged in a statutory interpretation analysis which consisted of the following:

- review of whether the UCA provides explicit jurisdiction to approve low-income rates. This included analysis of ss 23, 38, and 59-60 of the UCA;
- review of express and implied powers of the UCA, including analysis of the ordinary and grammatical meaning and the scheme and object of the Act; and
- review of legislative intent, if any.

It was in this context that the Commission concluded, based on its interpretation of the UCA, that it does not have the jurisdiction to approve a low-income rate in the absence of a cost reflectivity or efficiency reason.<sup>11</sup> It further found that because of this, it does not have the jurisdiction to establish rates based on ability to pay *per se*. The BCOAPO's proposed "holistic" analysis would have the Commission afford weight to a factor – affordability - that it does not have the jurisdiction to consider and that is legally not relevant regardless of how it might be weighed vis-a-vis other legally relevant factors.

It is respectfully submitted that the Commission's conclusion plainly flows from a proper reading of the UCA and that the BCOAPO has not shown that the Commission erred in its analysis. Therefore, it has not raised a *prima facie* error sufficient to warrant review.

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<sup>10</sup> See 2015 RDA Decision, sections 7.2 to 7.7.

<sup>11</sup> 2015 RDA Decision, pp 53, 59 and 67 for example.

### ***Commission Consideration of Socioeconomic Evidence***

At paragraphs 18-22 of the BCOAPO Application, the BCOAPO argue that because the Commission determined that it did not have jurisdiction to order discrimination in rates based solely on the personal characteristics of the customer, the Commission: (i) failed to consider the socioeconomic evidence regarding poverty put forward by the BCOAPO,<sup>12</sup> and, in so doing, (ii) failed to give the socioeconomic evidence more weight when assessing the affordability factor.<sup>13</sup>

This argument is directly connected to the one preceding, namely, the BCOAPO argues that its submissions regarding affordability as a relevant consideration in ratemaking should have been accepted by the Commission and given more weight in its statutory interpretation analysis. BC Hydro provided a response to this submission above which is that the BCOAPO's proposed analysis would have the Commission afford weight to a factor – affordability - that it does not have the jurisdiction to consider.

Further, the BCOAPO provide no legal basis on which to support its argument that the socioeconomic evidence it put forward should give greater weight to the affordability factor as a consideration. BC Hydro submits that affordability is either a relevant consideration or not and the significance of the issue does not elevate it as a factor if, as the Commission concluded, it is a lawfully irrelevant consideration in ratemaking.

BC Hydro submits that the Commission conducted a careful review of the legislation and evidence before it and gave weight to the evidence it considered appropriate. BCOAPO has not shown that the Commission erred in its analysis and it has therefore not raised a *prima facie* error sufficient to warrant review.

### ***The Commission's Interpretation of Sections 23, 38, and 58-61 of the Act***

At paragraphs 23 to 31 of the BCOAPO Application, the BCOAPO argue that in its consideration of its jurisdiction to approve low-income rates the Commission wrongly interpreted sections 23, 38, and 58-61 of the UCA and applied the wrong test.

In this regard, the BCOAPO allege that the Commission “unnecessarily limited the broad authority granted by ss. 23 and 38” which resulted in “unreasonably limit[ing] the scope of ss. 59-61 to cost of service considerations.”<sup>14</sup> The “test” the BCOAPO allege the Commission applied incorrectly was only looking at the plain meaning of these provisions of the Act versus considering the various provisions within the broader context of the Act, as required by Driedger's modern approach.<sup>15</sup> The BCOAPO suggest that the combined effect of these alleged errors was that the Commission did not give more consideration to affordability in setting rates.<sup>16</sup>

As outlined above, the Commission's interpretation and analysis of the UCA and its consideration of its jurisdiction to approve low-income rates is found in section 7.0 of the 2015 RDA Decision. A review of section 7.0 of the 2015 RDA Decision demonstrates that the Commission based its findings and determinations regarding its jurisdiction on the arguments

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<sup>12</sup> BCOAPO Application, para 18.

<sup>13</sup> BCOAPO Application, para 22.

<sup>14</sup> BCOAPO Application, para 28.

<sup>15</sup> BCOAPO Application, paras 26-27.

<sup>16</sup> BCOAPO Application, paras 25 and 27 for example.

and evidence that was placed before it. Extensive submissions were provided by BC Hydro, the BCOAPO and numerous other parties with respect to the interpretation of the UCA generally and sections 23, 38, and 59-61 specifically. Each of the arguments the BCOAPO now make with respect to ss 23, 38, and 59-61 in the BCOAPO Application were advanced in the 2015 RDA proceeding and were considered but ultimately not accepted by the Commission in the 2015 RDA Decision. As stated above, BC Hydro submits that disagreement with the Commission's findings should not be a sufficient basis upon which to allow a reconsideration application in the absence of a demonstrable *prima facie* error.

Regardless, BC Hydro submits that the Commission correctly interpreted the specific provisions of the UCA within the context of the legislative framework and engaged in a statutory interpretation analysis consistent with Driedger's modern approach.

Driedger's modern approach to statutory interpretation contains the following elements:

- a review of the grammatical and ordinary meaning of the words of an Act (i.e. a plain reading of the provision(s) in question);
- a review of the context within which the provision is situated which includes examination of the scheme and object of the Act; and
- a review of legislative intent, if any can be gleaned.<sup>17</sup>

The BCOAPO argue that ss 23 and 38 of the UCA are broadly worded provisions that should inform the Commission's rate-setting powers in ss 59-61. Essentially, the BCOAPO argue that the sections must be read together and when that analysis is performed, a broader interpretation of ss 59-60 is revealed.<sup>18</sup>

BC Hydro does not dispute that ss 23 and 38 are broadly drafted provisions however, as concluded by the Commission, (i) these provisions do not address the issue of rate-setting; (ii) there is no reference to the characteristics of a ratepayer; and, (iii) they provide no requirement for the Commission to consider the economic status of a ratepayer.<sup>19</sup> The BCOAPO argue that the Commission made these conclusions with respect to ss 23 and 38 based only on a "plain reading" of the words of the provisions and that it should have interpreted them harmoniously within the context of the Act.<sup>20</sup> As BCOAPO confirms<sup>21</sup>, and as outlined above, the first element of Driedger's modern approach is to do exactly what the Commission did – read the plain words of the Act to determine its grammatical and ordinary sense.<sup>22</sup> BCOAPO's argument

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<sup>17</sup> Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 6<sup>th</sup> ed. (Markham: LexisNexis Canada Inc., 2014), p 7 (*Sullivan*).

<sup>18</sup> See BCOAPO Application paras 27 and 31.

<sup>19</sup> 2015 RDA Decision, p 54.

<sup>20</sup> BCOAPO Application, paras 27 and 31.

<sup>21</sup> BCOAPO Application, para 27.

<sup>22</sup> *Sullivan*, p 29, para 3.7.

suggests that the Commission’s analysis stopped there.<sup>23</sup> With respect, there is nothing to support this conclusion.

As outlined above, the Commission’s consideration of its jurisdiction to approve low-income rates is found in section 7.0 of the 2015 RDA Decision, which, when read as a whole, identifies the following: the Commission reviewed the UCA to determine whether it had explicit jurisdiction to approve low-income rates, it also reviewed the express and implied powers of the UCA. The Commission reviewed each of the listed provisions against this backdrop and in relation to each other. Finally, it conducted an exhaustive review of Hansard extracts to determine legislative intent, if any.

The Commission clearly based its conclusions with respect to its interpretation of the UCA, and ss 23, 38 and 59-60 specifically, on both a plain reading of the provisions themselves and a review of the provisions in the broader context of the Act. The Commission noted that there is no evidence to indicate that ss 23 and 38 had ever been interpreted in such a way as to inform the ratemaking powers of the Commission<sup>24</sup> and that the rate-setting provisions of the UCA are founded on the characteristic of service.<sup>25</sup> Contrary to the BCOAPO’s submissions, the Commission carefully reviewed each listed provision in the context of other provisions of the UCA – as required by the modern approach to statutory interpretation.<sup>26</sup> As such, the Commission committed no error in this regard.

BC Hydro submits that the BCOAPO has failed to point to an error the Commission made in its interpretation and analysis of the listed sections of the UCA. As such, it has not raised a *prima facie* error sufficient to warrant review.

### ***Legislative Intent***

At paragraphs 32-34 of the BCOAPO Application, the BCOAPO make two arguments with respect to findings related to legislative intent. First, it argues that the Commission erred by finding a lack of legislative intent to provide the Commission with the jurisdiction to set low-income rates. Secondly, the BCOAPO allege that the Commission made “reviewable legal errors in relying on a private member’s bill never adopted by the legislature to interpret the state of the law, and in finding that section 37 of the *Interpretation Act* does not apply to preclude such reliance.”<sup>27</sup>

A review of section 7.1.3 of the 2015 RDA Decision makes it clear that as part of its statutory interpretation analysis, the Commission considered whether the legislature intended for it to have jurisdiction to set low-income rates. In their submissions, both BC Hydro and BCOAPO submitted Hansard extracts as evidence in this regard.

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<sup>23</sup> The BCOAPO appear to be arguing that the Commission’s use of the words “a plain reading” and “plain meaning” in the 2015 RDA Decision suggest that the Commission only looked at the ordinary and grammatical words of the Act in its analysis. With respect, the BCOAPO are focusing on specific words rather than on a review of the Commission’s entire analysis.

<sup>24</sup> 2015 RDA Decision, p 54.

<sup>25</sup> 2015 RDA Decision, p 59.

<sup>26</sup> See for example p 54 of the 2015 RDA Decision where the Commission considered sections 23 and 28 in the context of ss 59-60.

<sup>27</sup> BCOAPO Application, para 34.

With respect to its first, more general argument with respect to the Commission's consideration of the Hansard extracts,<sup>28</sup> BCOAPO's submissions amount to no more than an argument that the hearing panel failed to give certain parts of the evidence the weight desired by BCOAPO and that the Commission drew conclusions from other evidence that BCOAPO did not accept or agree with. The fact that the Commission does not find certain evidence persuasive does not support a *prima facie* conclusion that the Commission erred in law.

With respect to its second argument, BC Hydro submits that the BCOAPO is mischaracterizing the Commission's determinations with respect to both its use of the private member's bills and weight given to the evidence submitted in respect of legislative intent.

At page 62 of the 2015 RDA Decision, the Commission noted that in its submissions, BC Hydro cited the defeat of April 2008, March 2014 and March 2016 proposed amendments to the UCA. With respect to the Hansard extracts in which actual amendments to the UCA were discussed, the Commission noted BC Hydro's submission that the legislature's failure to not pass the bills indicates "clearly a legislative intent to not empower with the Commission" with jurisdiction to set low-income rates.<sup>29</sup>

The Commission also found that, given the express language of section 37 of the *Interpretation Act*, the section did not "preclude consideration of the handling of the proposed bills" by the legislature as guidance in determining legislative intent.<sup>30</sup>

The Commission concluded that it found no evidence of legislative intent to provide it with jurisdiction to set low-income rates. According to the Commission, the evidence that proposed amendments were tabled in the legislature, which evidence included both private member's bills that were never passed and amendments that were adopted, "supports the view that the legislature has expressly turned down low-income amendments."<sup>31</sup>

While the Supreme Court of Canada has repeatedly stated that a court must be cautious about resolving questions of interpretation by referring to Hansard, it has endorsed the reliance on Hansard as evidence of the background and purpose of the legislation.<sup>32</sup>

With respect, the BCOAPO submissions in paragraph 34 of its application are mischaracterizing the Commission's use and consideration of the evidence when it argues that the Commission "rel[ied] on the private member's bill never adopted by the legislature." Nowhere in the 2015 RDA Decision did the Commission rely on the evidence that the legislature had not adopted private member's bills to interpret the state of the law. The Commission acknowledged that the failure of the legislature to pass the bills was background and supported the Commission's view that the legislature had expressly turned down low-income amendments in the past.

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<sup>28</sup> BCOAPO Application, paras 32-33.

<sup>29</sup> 2015 RDA Decision, p 64.

<sup>30</sup> 2015 RDA Decision, p 66.

<sup>31</sup> 2015 RDA Decision, p 67.

<sup>32</sup> *Canadian National Railway Co. v. Canada (Attorney General)*, [2014] 2 SCR 135, 2014 SCC 40 (CanLII), para. 47.

BC Hydro submits that the BCOAPO has not raised a *prima facie* error sufficient to warrant review with respect to the Commission's use of Hansard or in its findings with respect to legislative intent.

### ***Commission Use of Jurisprudence in other Canadian Jurisdictions***

At paragraphs 35 to 38 of the BCOAPO Application, the BCOAPO allege that the Commission erred in its interpretation of jurisprudence in other Canadian jurisdictions and that it ascribed too little weight to decisions supportive of BCOAPO's position and too much weight to decisions contrary. With respect, this argument fails for the same reason as above, namely, the fact that the Commission does not find evidence persuasive does not constitute an error of law.

In section 7.1.4 of the 2015 RDA Decision the Commission "examined in detail" relevant case law provided by various parties in argument in an effort to determine whether the rulings of other jurisdictions could "be helpful in providing guidance" to the Commission. The Commission explicitly stated that it is "not bound by decisions in other jurisdictions."<sup>33</sup>

A close reading of section 7.1.4 confirms that the Commission had, (i) concluded based on its interpretation of the UCA that it did not have the jurisdiction to approve a low-income rate in the absence of an economic or a cost of service basis and, (ii) that other jurisdictions with similar legislation provided support for that conclusion but were not determinative in any event, they merely provided directional guidance. BCOAPO's submissions in this regard have not demonstrated a *prima facie* error on the part of the Commission sufficient to warrant review.

### **MATERIAL IMPLICATIONS**

In order to attract reconsideration, the alleged error(s) must also have significant material implications. This is an important consideration because the BCOAPO has not sought variance of the Commission's findings with respect to its jurisdiction, but rather with respect to a number of specific orders relating to the BCOAPO's low-income rate proposals.<sup>34</sup> BC Hydro submits that none of the alleged errors of law outlined by the BCOAPO have material implications because the disputed orders do not turn on those alleged errors.

The BCOAPO argue that "collectively, the errors led to the finding that the Commission did not have jurisdiction to entertain the BCOAPO's low-income proposals" which had the "material impact that these proposals were rejected by the Commission without any adequate analysis of their desirability as a public interest objective."<sup>35</sup> BC Hydro respectfully disagrees.

In the 2015 RDA Decision the Commission determined that it found no evidence that the UCA provides the Commission with the jurisdiction to approve a low-income rate in the absence of a cost reflectivity or efficiency basis.<sup>36</sup> After making this determination the Commission next examined, in detail, the BCOAPO's specific low-income proposals to determine whether a specific economic or cost of service basis reason exists to approve a low-income rate. In this respect, the following is instructive:

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<sup>33</sup> 2015 RDA Decision, p 67.

<sup>34</sup> Specifically, the BCOAPO seeks variance of paragraphs 14, 16 and 17 of Order G-5-17, as outlined at paragraph 5 of the BCOAPO Application.

<sup>35</sup> BCOAPO Application, para 43.

<sup>36</sup> 2015 RDA Decision, p 80.

- the BCOAPO's regulatory justification for its low-income proposals rested on three pillars: (i) improved cost reflectivity; (ii) improved efficiency; and (iii) improved affordability;
- the BCOAPO's evidence was that the low-income rate recommendations were dependent on all three regulatory justifications – in the absence of any one of the justifications, the recommendation would change;<sup>37</sup> and
- The combined effect of this was that if any one of the pillars was not made out, the proposal could no longer stand.

In the 2015 RDA Decision, the Commission determined the following with respect to each of the BCOAPO's regulatory justifications for its low-income proposals:

- The Panel does not accept BCOAPO's cost reflectivity pillar as a regulatory justification for the proposed essential services usage block (**ESUB**) rate;<sup>38</sup>
- The Panel does not accept BCOAPO's improved efficiency pillar as providing sufficient regulatory justification for the proposed ESUB rate;<sup>39</sup>
- ...affordability is not a regulatory justification for the proposed ESUB rate...BCOAPO's affordability pillar cannot stand without a sufficient cost savings as a justification.<sup>40</sup>

It is clear that the result of the Commission's determinations with respect to its review of the BCOAPO's low-income rate proposals is that even if the Commission had found it had the jurisdiction to consider ability-to-pay in setting rates and/or that it had the jurisdiction to establish preferential rates for low-income customers, the subject orders could not have been issued because the other regulatory justifications on which BCOAPO's proposals were based were not accepted by the Commission. Quite simply, the Commission's determination(s) with respect to affordability was not the only bar to getting BCOAPO's low-income rate proposals granted because each of cost reflectivity and improved efficiency were also not accepted by the Commission.

Furthermore, as BC Hydro argued and the Commission noted, the stated purpose of BCOAPO's low-income rate proposals was to address rate affordability and assist low-income ratepayers. While BCOAPO offered socio-economic evidence with respect to the nature and extent of poverty in BC and opinion evidence of a possible solution it did not offer evidence that the specific low-income rate proposals would provide meaningful benefits to low-income ratepayers.<sup>41</sup> As such, regardless of the Commission's determinations with respect to its jurisdiction to order low-income rates, the affordability pillar of BCOAPO's regulatory justifications would not have been established and the requested low-income rates would not have been ordered.

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<sup>37</sup> See paragraphs 9-13 of BC Hydro's October 11, 2016 Reply Argument to BCOAPO.

<sup>38</sup> 2015 RDA Decision, p 85.

<sup>39</sup> 2015 RDA Decision, p 90.

<sup>40</sup> 2015 RDA Decision, p 93.

<sup>41</sup> See paragraphs 16-19 of BC Hydro's October 11, 2016 Reply Argument to BCOAPO.

Finally, it is noted that even if the Commission had concluded that income was a legally relevant factor in ratemaking, and even if it had a basis to conclude that the BCOAPO's specific rate proposals were justified by each leg of the "three-legged stool", and even if it had evidence before it that linked the BCOAPO's specific rate proposals with its identified affordability issues, the Commission has a broad discretion with regard to rate-setting, and could have lawfully decided to not establish low-income rates. In this regard we refer to pages 25-26 of BC Hydro's October 11, 2016 Reply Argument to BCOAPO where it sets out compelling reasons for the Commission to not exercise any such low-income rate jurisdiction as it might have.

#### **NEW EVIDENCE**

If the Commission believes that advancement to phase two is warranted, BC Hydro submits that new evidence or an opportunity for new parties to present evidence is not necessary given the extensive evidentiary record in this proceeding.

#### **SCOPE OF RECONSIDERATION**

If the Commission believes that advancement to phase two is warranted, BC Hydro submits that additional items should not be considered and the issues raised in the BCOAPO Application should be considered on an issue by issue basis. Only issues meeting the required criteria set forth by the Commission should be considered.

#### **CONCLUSION**

For the reasons outlined above, BC Hydro submits that the issues raised by the BCOAPO fail to meet the threshold criteria for reconsideration and as such, the Commission should not advance to phase two of the reconsideration and the BCOAPO Application should be dismissed.

Yours very truly,

LAWSON LUNDELL LLP



Jeff Christian  
JC/beg