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March 31, 2017

Mr. Patrick Wruck  
Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: Project No. 3698898  
British Columbia Utilities Commission (BCUC or Commission)  
British Columbia Hydro and Power Authority (BC Hydro)  
Class Exemption for BC Hydro Customers Under Certain Lease  
Arrangements**

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BC Hydro writes in response to the Commission's March 16, 2017 letter (Order No. G-38-17, Exhibit A-3) in which the Commission invites further submissions from participants regarding the proposed class exemption for lessors who would be public utilities under the *Utilities Commission Act (UCA)* in consequence of providing electricity purchased from BC Hydro to lessees under lease agreements with terms greater than five years. Specifically, the Commission has invited submissions on the following:

1. Submissions previously made by other participants in this proceeding.
2. The form of proposed exemption order appended to Exhibit A-3.
3. Whether the form of proposed exemption order "provides adequate conditions to ensure that any variance between what a Lessor pays BC Hydro for electricity and the charges lessors make to their Lessees is reasonable"?
4. Whether the "proposed exemption would have any significant negative impacts on BC Hydro or its ratepayers?"
5. Whether the "proposed exemption would have any significant impact on the efficacy of demand-side measures"?

BC Hydro addresses each of these items in the balance of this submission, but for convenience has organized its submissions so that it responds to the Commission's questions first.

## **Does the Proposed Exemption Order Ensure Reasonable Variance between BC Hydro Charges to Lessors, and Lessors' Charges to Lessees?**

The Commission asks whether the proposed class exemption order<sup>1</sup> ensures a reasonable variance between what BC Hydro would charge a lessor for electricity, and what such lessor could charge its lessees for that electricity.

BC Hydro notes that nothing in the proposed class exemption order speaks directly to the issue of what an exempt lessor could charge its lessees for electricity that the lessor purchased from BC Hydro. For example, there is no explicit "rate cap" mechanism of the type that was required by the Commission in regard to the public utility exemption granted in favour of Templeton LP.<sup>2</sup> There is a proposed requirement that exempt lessors comply with the re-sale provisions of BC Hydro's Electric Tariff, as amended from time to time. However, the re-sale provisions of BC Hydro's Electric Tariff would not prohibit an exempt lessor from charging its lessees<sup>3</sup> more than what BC Hydro charged the lessor. Further, the re-sale provisions of BC Hydro's Electric Tariff would not prohibit an exempt lessor from charging its lessees more than what BC Hydro would have charged those lessees if they were BC Hydro customers.

In this regard, BC Hydro notes that section 9.2 is the only provision in its Electric Tariff that restricts a BC Hydro customer from re-selling metered electricity at a rate of its choosing. For convenience, here is what section 9.2 says:<sup>4</sup>

If a Customer wishes to sell Electricity which the Customer has purchased from BC Hydro to a tenant of that Customer on the same Premises on a metered basis, then the Customer shall agree that the selling price for such Electricity shall not exceed the price which BC Hydro would have charged had that tenant been a Customer of BC Hydro. This requirement shall be included in an agreement for resale between BC Hydro and the Customer.

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<sup>1</sup> Appendix B to Order G-38-17.

<sup>2</sup> Order No. G-131-15, paragraph 3 and recital F. BC Hydro notes that the "rate cap" is specific to Templeton.

<sup>3</sup> The Commission's question asks about the variance between what BC Hydro charges a lessor, and what a lessor would charge its lessees. Unless the lessor is re-selling electricity to only one lessee, the amount charged by a lessor to a lessee would normally be a fraction of BC Hydro's charges to the lessor. It follows that the variance between BC Hydro's charges to the lessor and the lessor's charges to its lessees would normally be quite large. Accordingly, BC Hydro understands the Commission's question regarding a "reasonable variance" to be in relation to the difference between BC Hydro charges to a lessor, and the lessor's charges to its lessees *in aggregate*. Further, BC Hydro assumes the Commission's interest is primarily in regard to the possibility of an exempt lessor charging its lessees more than what it was charged or what BC Hydro would have charged.

<sup>4</sup> On the record as Exhibit A2-4.

Section 9.2 speaks only to situations where the BC Hydro customer is re-selling to a "tenant". "Tenant" is defined in the UCA as excluding "lessee[s] for a term of more than 5 years", and as a matter of statutory interpretation, the word "tenant" in BC Hydro's Electric Tariff has the same meaning as in the UCA.<sup>5</sup> It follows that the restrictions inherent in section 9.2 regarding re-sales are not applicable to lessors whose lessees are subject to leases with terms of more than five years. In consequence, there are no conditions in the proposed exemption order that would, at this time,<sup>6</sup> prohibit an exempt lessor from charging its lessees more than what BC Hydro charged the lessor, or from charging its lessees more than what BC Hydro would have charged those lessees if they were BC Hydro customers.

Nevertheless, BC Hydro notes that there are three mechanisms in the proposed exemption order that will serve to limit the likelihood that an exempt lessor's charges to its lessees will be unreasonably more than what BC Hydro charged the lessor, or be unreasonably more than what BC Hydro would have charged those lessees if they were BC Hydro customers:

1. The class exemption would be from section 71 (regarding energy supply contracts) and all of Part 3 except section 25, 38, 41 and 42 (paragraph 1.1. of the proposed exemption order). The continuing applicability of those four provisions of the UCA would ensure on-going regulatory oversight over exempt lessors. In particular, section 25 would allow the Commission on a complaint or on its own motion to find that a lessor's service is unreasonably discriminatory, among other things, and order the exempt lessor to provide service the Commission finds to be "reasonable, safe, adequate, and fair"; section 38 would oblige an exempt lessor to provide such service; section 41 would ensure that the exempt landlord could not discontinue the service without a Commission approval; and section 42 would ensure that generally an exempt lessor is obliged in law to abide by the Commission's lawful orders. Together these exceptions reserve to the Commission significant supervisory powers that would allow it to respond if an exempt lessor was charging its lessees unreasonably more than what it was being charged by BC Hydro, or what the lessees would have been charged by BC Hydro.
2. The Commission would expressly reserve the power to rescind the class exemption (paragraph 2. of the proposed exemption order). This reservation would serve as a powerful incentive on exempt lessors to not abuse their monopoly service-provider

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<sup>5</sup> See BC Hydro's response to BCUC IR 1.1.7, Exhibit C1-1, in the Templeton LP exemption application proceeding for an elaboration of this principle.

<sup>6</sup> BC Hydro notes that the Commission alluded to this limitation in section 9.2 in its December 22, 2014 report to the Minister of Justice and Attorney General regarding Templeton's exemption application. BC Hydro also notes the Commission's more general concerns with the re-sale provisions of BC Hydro's tariff and business practices as expressed in that report, and its recommendations that the re-sale provisions be re-visited in BC Hydro's rate design review. BC Hydro confirms that the re-sale provisions of its Electric Tariff, including section 9.2, are within scope of Module 2 of the 2015 RDA proceeding.

status, and in particular to not charge their lessees significantly more than what they are charged by BC Hydro or what BC Hydro would charge their lessees.

3. The exemption would be subject to lessors registering with the Commission, which registration process would require the provision by lessors of their names, locations, and number of tenants (paragraph 3. of the proposed exemption order). This condition would serve to remind exempt lessors of their public utility obligations and the Commission's on-going oversight of their service, and provide the Commission with the ability to supervise exempt lessors on an *ad hoc* basis or even on an audit-type basis if the Commission thought that desirable or necessary.

If the Commission is not satisfied that these provisions of the proposed exemption order are adequate to ensure that an exempt lessor's charges to its lessees will not be unreasonably more than what BC Hydro charged the lessor, or not be unreasonably more than what BC Hydro would have charged those lessees if they were BC Hydro customers, then it would be appropriate to add a further "rate cap" condition to the proposed exemption order. Here are some additional words (underlined) in paragraph 1.1 of the proposed order that might suit that purpose:

Exempts from section 71 and Part 3 of the UCA except for sections 25, 38, 41 and 42, all BC Hydro customers with lease arrangements, where the lessor, not otherwise a public utility, provides electricity only to the lessee where the lease period is greater than five years, if the service or commodity is not resold to or used by others and meets the criteria of the BC Hydro Electric Tariff and Terms and Condition, as amended from time to time, for the Resale of Electricity, as applicable and also where the lessor's charges to its lessee do not exceed what BC Hydro would have charged had the lessee been a customer of BC Hydro, and where all other requirements of the UCA are met.

The additional words would replicate in a generic way the "rate cap" condition the Commission imposed upon Templeton in Order No. G-131-15, and are consistent with the substantive re-selling restriction in section 9.2 of BC Hydro's Electric Tariff. However, they would apply not only in a sub-metering context, but also where a lessor allocates its BC Hydro's charges to lessees on, for example, a proportionate square footage basis.

### **Could the Proposed Exemption Order Negatively Impact BC Hydro or its Ratepayers?**

If the proposed exemption order included the "rate cap" condition outlined above, then there may be a revenue difference between what the lessor is charged (e.g., the Large General Service rate) and what the lessor charges its lessee which is not to exceed what BC Hydro would have charged had the lessee been a customer of BC Hydro (e.g., the Small General Service rate). BC Hydro does not think this revenue difference would have a negative impact on BC Hydro or its ratepayers because its rates are designed to recover the costs for serving the customer class.

## **Could the Proposed Exemption Order Have a Significant Impact on the Efficacy of Demand-Side Measures?**

The class exemption, if approved, will not result in any significant impact on the efficacy of BC Hydro's DSM programs. For example, commercial lessees can currently participate in the Building Energy Savings Incentives offer with an agreement from their lessor, while lessors who have Key Account Managers can undertake efficiency projects through the Leaders in Energy Management program. Residential lessees will also see no change. They will still have access to program offers that do not require a BC Hydro account or that require the agreement of the lessor to participate, and the lessor can participate in residential programs for the benefit of the lessee as desired (for example, the purchase of efficient appliances). Accordingly, BC Hydro does not believe that there will be a significant impact on the efficacy of its DSM programs.

## **BC Hydro Response to Participant Submissions**

Submissions in regard to the proposed class exemption order have been made by Templeton (Exhibit C3-2), Onni Group (Exhibit C6-2) and the CEC (Exhibit C2-2). In addition, Templeton has already filed its submissions in response to Order No. G-38-17 (Exhibit C3-3). BC Hydro offers the following responses to some of those submissions; where it hasn't responded to a submission, it should not be taken as having agreed to or otherwise endorsed the submission.

### Templeton

Templeton asks for a further regulatory proceeding to consider class exemptions in regard to the re-sale of electricity from suppliers other than BC Hydro, and in regard to the re-sale of natural gas. BC Hydro has no objection to that proposal, but submits that any such proceeding be a separate proceeding that would follow the current one.

In its March 23, 2017 submission (Exhibit C3-3) Templeton asks that if the proposed class exemption is granted, that it not refer to the exempt lessors as "exempt public utilities" on the basis that once the exemption is granted there is no longer a meaningful distinction between lessors whose premises are leased for terms more, or less, than five years. With respect, BC Hydro disagrees. Assuming the class exemption is granted, certain lessors will have the benefit of that exemption on the basis of exercises of discretion by both the Commission and the Minister,<sup>7</sup> while others will have it as a right established by the legislature when it enacted the UCA. Moreover, the proposed class exemption would continue the Commission's regulatory oversight of lessors of terms more than five years through sections 25, 38, 41 and 42 of the UCA; would be subject to a Commission order rescinding the exemption; and would be subject to registration

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<sup>7</sup> The Commission's power to order an exemption under section 88(3) of the UCA is subject to the "advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*".

March 31, 2017  
Mr. Patrick Wruck  
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British Columbia Utilities Commission  
Class Exemption for BC Hydro Customers Under Certain Lease Arrangements

requirements - and none of these conditions would be applicable to lessors of terms less than five years. In the interests of transparency, the distinction should be maintained.

### CEC

The CEC asks about the significance of the five-year lease term that if exceeded renders an electricity re-selling lessor a public utility. In response, BC Hydro refers to its response to BCUC IR 1.1.1 in the Templeton proceeding (Exhibit C1-1), and in particular Attachment 1, a copy of which is appended to this submission for convenience.<sup>8</sup>

The CEC asks whether it is possible and/or appropriate for some re-sale customers of lessors to pay less than what they would pay if they were BC Hydro customers for the same service. BC Hydro notes that this is possible. Moreover, given that lessors may freely choose to include the cost of utilities in rent, or absorb them in overhead, rather than transparently allocating them or re-selling them, BC Hydro does not see this as problematic.

Finally, the CEC suggests a stream-lined review process for a resolution of this matter. With respect, BC Hydro does not see the value of such a process in light of information that has been provided on the record of this proceeding to date.

### **Form of Proposed Order**

BC Hydro has no concerns with the form of proposed order shown in Appendix B to Order No. G-38-17, for the reasons set out above, subject to the Commission's potential interest in including a generic "rate cap" condition in the exemption order as discussed above.

For further information, please contact Gordon Doyle at 604-623-3815 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



Fred James  
Chief Regulatory Officer

gd/tn

Enclosure

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<sup>8</sup> The Commission has not been empowered to change the five-year "tenant" definition in the UCA.

<b>British Columbia Utilities Commission</b> Information Request No. 1.1.1 Dated: <b>November 7, 2014</b> British Columbia Hydro & Power Authority Response issued <b>November 17, 2014</b>	Page 1 of 2
Templeton LP <b>Application for Exemption Pursuant to Section 88(3) of UCA Regarding the Regional Outlet Centre in Development at Vancouver International Airport</b>	<b>Exhibit: C1-1</b>

**A. COMPLIANCE WITH THE BC HYDRO ELECTRIC TARIFF****1.0 Reference: Advisory Notice  
Multiple Occupancy Metering Requirements and Resale of  
Electricity**

Section 9.2 Resale of Electricity of the British Columbia Hydro and Power Authority (BC Hydro) Electric Tariff states:

If a Customer wishes to sell Electricity which the Customer has purchased from BC Hydro to a tenant of that Customer on the same Premises on a metered basis, then the Customer shall agree that the selling price for such Electricity shall not exceed the price which BC Hydro would have been charged had that tenant been a Customer of BC Hydro. This requirement shall be included in an agreement for resale between BC Hydro and the Customer.

- 1.1.1 Please confirm that in the above quote “on a metered basis” means sub-meters are required.

**RESPONSE:**

As a preliminary matter, the quoted portion of section 9.2 of the BC Hydro Electric Tariff incorrectly uses the phrase “the Customer shall agree that the selling price for such Electricity shall not exceed the price which BC Hydro would have been charged had that tenant been a Customer of BC Hydro” and should instead read “the Customer shall agree that the selling price for such Electricity shall not exceed the price which BC Hydro would have charged had that tenant been a Customer of BC Hydro.” [Emphasis added].

In BC Hydro’s view, the phrase “on a metered basis” in section 9.2 of the BC Hydro Electric Tariff means that sub-meters are required if a Customer wishes to sell electricity to a tenant on a metered basis. Please also refer to the response to the BCUC IR 1.1.3.

As noted in BC Hydro’s letter to the Commission dated July 14, 2011 regarding the Resale of Electricity to Tenants with Leases longer than five years (Attachment 1) at page 3, item 3, it is quite common for mall owners, commercial building owners, and even some apartment building owners/residential houses having suites, etc., to charge tenants for their utilities on a “square footage” or other allocation basis, and not to have the units individually sub-metered.

<b>British Columbia Utilities Commission</b> Information Request No. <b>1.1.1</b> Dated: <b>November 7, 2014</b> British Columbia Hydro & Power Authority Response issued <b>November 17, 2014</b>	Page 2 of 2
Templeton LP <b>Application for Exemption Pursuant to Section 88(3) of UCA Regarding the Regional Outlet Centre in Development at Vancouver International Airport</b>	<b>Exhibit: C1-1</b>

**BC Hydro remains of the view that, as a technical matter, BC Hydro's Electric Tariff requirement therefore does not apply to the examples cited above in light of the current wording, which makes the resale of electricity to a tenant "on a metered basis" a condition that triggers the obligation for the Customer to agree that the selling price for resold electricity shall not exceed the price which BC Hydro would have charged had the tenant been a Customer of BC Hydro.**



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July 14, 2011

Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Ms. Gillis:

**RE: British Columbia Utilities Commission (BCUC)  
British Columbia Hydro and Power Authority (BC Hydro)  
Resale of Electricity to Tenants with Leases longer than 5 years**

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BC Hydro is writing in response to the BCUC's letter of June 29, 2011, in which the BCUC notes that the *Utilities Commission Act (the Act)* exempts persons who provide utility services only to their "tenants" from the definition of "public utility" in the Act, but then further stipulates that a tenant "does not include a lessee for a term of more than five years." The BCUC further notes that BC Hydro's Electric Tariff contains a Resale of Electricity provision (section 9.2 of the Electric Tariff provided in Attachment 1) under which BC Hydro can restrict the price at which a customer can resell electricity to the customer's tenants.

Having regard to this Resale of Electricity provision the BCUC is seeking views on whether or not it should petition the government to delete the requirement from the Act that customers who wish to resell electricity to tenants holding leases longer than five years must obtain a specific exemption under the Act, or otherwise be subject to regulation as a public utility.

BC Hydro is aware that the Act currently provides that the BCUC may only exempt persons (who would otherwise be subject to regulation as a public utility) from some or all of the requirements of the Act if the approval of the Lieutenant Governor in Council (**LGIC**) for the exemption is first obtained. BC Hydro is also aware of resale situations involving a landlord and only a very few tenants where the resources of the BCUC, and the LGIC, have had to be engaged because of the technical requirements of the Act; that is, because of the "5-year rule", but without any "public utility" factors being present. However, for the reasons set out below, BC Hydro is concerned that removal of the five-year rule could leave a regulatory void, with tenants who are essentially in the same position as homeowners and condominium owners being deprived of the benefits of public utility regulation insofar as their electricity supplies are concerned.

British Columbia Hydro and Power Authority, 333 Dunsmuir Street, Vancouver BC V6B 5R3  
[www.bchydro.com](http://www.bchydro.com)



July 14, 2011  
Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Resale of Electricity to Tenants with Leases longer than 5 years

Page 2 of 6

BC Hydro will first comment on what it understands to be the reasons for the five-year rule. BC Hydro will also put forward suggestions for a more streamlined process than currently exists.

### **Reasons for Five-year Rule**

BC Hydro has not researched the origins of the provisions in the Act dealing with the supply of utility services to tenants by landlords, but has a view as to why they were added.

In the 1970s and 1980s there was a trend towards residential land developments, and condominium developments in particular, using long-term leases as a form of “ownership”. This was partly due to rapidly increasing land values, and partly due to other factors. Typically a 99-year lease structure would be used, but sometimes other long-term lease durations were employed. In the case of apartment/strata type buildings, there were some problems and deficiencies in the Strata Titles legislation of the day, and some developers turned to lease-based developments as a means of imposing tighter, more orderly, ongoing controls which were seen as necessary for certain types/themes of development. Finally, lease structures were used by some developers as a means of avoiding municipal restrictions on apartment/strata conversions, and by groups of people who wanted to get together to establish “co-operative type” recreational developments.

On the other hand, it was – and quite possibly still is – common for apartment building owners, house owners letting out basement and upstairs suites, commercial building owners, and other landlords letting premises under month-to-month or other short-term tenancies, to be the customer for the electricity from BC Hydro, but to then charge the tenant (on a metered or other basis) for the electricity consumed in the rental units. The “99-year lease” seems to have largely disappeared in British Columbia as an approach favoured by developers, but there are certainly a number of older developments still around, and depending on property market developments/preferences, this approach could become favoured again in some situations.

It appears to BC Hydro that the “5-year rule” was adopted by the government of the day as a means to allow landlords to supply utilities to their tenants in normal short-term rental/tenancy situations, but (potentially) to subject landlords in long-term lease/development situations to public utility regulation. If the Act had simply exempted sales to “tenants” [parenthetically BC Hydro notes that exemption (d) of the definition of “public utility” refers to “...provid[ing] the service or commodity... to the person’s tenants”, and does not specifically use the term “sell” or “resell” or similar wording] but without containing the five-year restriction, provision of electricity and resales to what are essentially homeowners in these long-term lease situations would have been exempted from regulation. The result would have been that these persons would have no benefit of the regulatory regime provided by the Act with regard to rates, and maintenance and replacement of utility system facilities.



July 14, 2011  
Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Resale of Electricity to Tenants with Leases longer than 5 years

### **BC Hydro's Electric Tariff**

The BCUC, in its letter of June 29, 2011 has also stated that it believes that BC Hydro's Tariff and Terms and Conditions, as they currently exist, protect the public interest for all customers, including customers with tenants having lease terms greater than five years. BC Hydro does not share this view of its tariff provisions, particularly if the Act were amended to exempt sales or resales to tenants, regardless of the tenancy term, from regulation.

BC Hydro has the following concerns, some of which are similar to those noted above:

1. 99-year leases/other long term leases – If the exemption for sales by customers to tenants were to remain in the Act, but the five-year limitation were removed, then the only protection such tenants would enjoy would be under BC Hydro's resale provision (section 9.2 of the Tariff provided in Attachment 1). However, this has limitations (as discussed below) even insofar as the rate is concerned, and further would offer such tenants no protection insofar as maintenance and upgrade costs of the electric system facilities serving them, and other sorts of requirements that would (or could) be imposed on a developer under public utility regulation.
2. Electric Tariff requirement that sales to the tenant be "on the same Premises". – BC Hydro's resale provisions are only applicable to tenants "on the same Premises". While in a typical apartment building or commercial building situation the sales would likely be held to be on the same premises, in the case of some of the residential development/recreational property development situations, the lessor/landlord could well have a case that the resales aren't being made on the same premises.
3. Electric Tariff requirement that the sales be "on a metered basis". – BC Hydro notes that it is quite common for mall owners, commercial building owners, and even some apartment building owners/residential houses having suites, etc. to charge tenants for their utilities on a "square footage" or other allocation basis, and not to have the units individually sub-metered. As a technical matter, BC Hydro's Tariff requirement would therefore not apply, but even from a policy point of view (if the wording in the Tariff were changed) it would be very difficult, practically speaking, for BC Hydro to "police" the situation and such tenants would be without any rate or regulatory protection.
4. Basis for BC Hydro's Tariff Provision – Section 9.2 of BC Hydro's tariff was developed at a time when BC Hydro had simple rate categories and rate structures – "transmission service", "general service" and "residential service". The owner of an apartment building or commercial building could purchase electricity from BC Hydro at general service rates and resell it to tenants at residential service rates, and make a small profit on the transaction – which would compensate the owner for the electric facilities, meters, etc. required to serve the tenants and meter their consumption. However, with the significant changes that have taken place over the last several years to BC Hydro's rate structures, with tiered/stepped conservation rates there is no longer any guarantee that an owner could make a simple, straight-forward



July 14, 2011  
Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Resale of Electricity to Tenants with Leases longer than 5 years

Page 4 of 6

mark-up on sales to tenants. This applies even if the resales are metered (and therefore come under section 9.2); and, of course, increases the difficulties for BC Hydro to police compliance with section 9.2. These factors increase the likelihood that owners would find ways of structuring their charges-outs to their tenants in ways that did not attract the operation of BC Hydro's Tariff – e.g., by applying some sort of square footage or other charge-out formula to the tenants. Presently these types of arrangements likely still do come under the Act – because of the “provides ...to tenants” wording in the Act, whereas if these provisions are removed from the Act there would be no controls whatsoever, if the sole reliance would be on BC Hydro's Tariff.

### **Non-tenant Situations**

BC Hydro notes that the BCUC has only addressed “tenants” in its letter of June 29, 2011, and BC Hydro is aware of other similar situations that give rise to similar issues but which do not fall under the “tenant” exemption in the Act. Although outside the scope of the BCUC's current tenant review, BC Hydro believes that any contemplated amendments to the definition of public utility in the Act, and to the exemption provisions and procedures, should also address these situations. Some examples are:

- Strata “rental pool” situations such as hotels/recreational developments in resort towns such as Whistler, where each unit is owned by an individual strata owner, but the units are then placed into a rental pool and rented out as hotel rooms. BC Hydro has concerns around the possibility that the main electricity account for the building may be in the name of the Strata Corporation, with the Strata Corporation then metering the electricity to each unit and charging the unit owner for the consumption (likely on a flow-through basis, but possibly with some mark-up). Such an arrangement would not come under BC Hydro's Tariff (because the unit owners are not “tenants”), but would arguably constitute a “provision of service” under the Act and would not be exempted by the “tenant” exemption.
- “Corporate” or “co-operative” type developments – This type of ownership structure can be used as a means of doing strata-type developments; i.e., with a corporation being set-up, and the “owners” of each of the parcels/units then holding shares in the corporation (often with a different class of shares being allocated to each unit “owner”). Similarly, cooperatives were set up, with the members being entitled to the particular units that were allocated to them in accordance with the rules of the cooperative. In both of these cases, if the corporation or cooperative resold electricity to its shareholders/members, it would likely fall under the definition of public utility in the Act, but not under the tenant exemption; and would also not fall under BC Hydro's resale provision. BC Hydro is unaware of any new developments of this type having gone forward in the last several years, but believes that some older developments of this type still exist.



July 14, 2011  
Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Resale of Electricity to Tenants with Leases longer than 5 years

Page 5 of 6

**Recommendation:**

BC Hydro has considered the points raised by the BCUC in its letter and some of the situations that have been encountered in the past and noted above. BC Hydro does believe that changes to the Act are warranted, but does not believe that the removal of any roles and responsibilities of the BCUC, and leaving BC Hydro's tariff as the sole mechanism for dealing with the issues discussed in this submission, is the appropriate course of action. Rather, BC Hydro's recommends a more flexible form of control which would be as follows:

- Removing the requirement for exemption from public utility status to have prior cabinet approval before it could be granted by the BCUC. In BC Hydro's view, the government should provide the BCUC with the ability to make decisions relating to public utilities and whether or not they are exempt from regulation. The Act already confers on the BCUC wide ranging powers of regulation and control and adding in the ability to exempt a utility from regulation without the need for cabinet approval seems to be a revision to the Act that would provide for a more efficient regulatory process. Alternatively, the government could give the LGIC – or perhaps the BCUC itself - power to make regulations providing for the situations in which entities which are technically/legally public utilities would be exempt from some or all of the requirements of the Act relating to public utilities, the thresholds that would apply, and the processes and requirements that must be followed, etc. This would, or could, allow for much simpler, speedier processes, with much less involvement by the BCUC itself.
- Removing the exemption found in clause (d) of the definition of public utility relating to the provision of utility services to tenants, i.e., so that sales to tenants, so far as the Act is concerned, are the same as sales or the provision of service to anyone else. This however would then require changes to the Act to allow for either of the following:
  - For the LGIC to have the power to make regulations exempting persons from the "public utility" status/requirements that would otherwise apply to them. This would give the Cabinet flexibility to make regulations, and to amend them in a responsive way – i.e., as new situations came to light, as new property leasing/development structures were developed.
  - For the BCUC itself to have the powers contemplated directly above, i.e., the BCUC itself would have the power to issue regulations as circumstances required, rather than by the LGIC. The government could put some controls on the BCUC's latitude in this respect if it saw fit to do so, but while still allowing for a simpler, more flexible regime than currently exists.

BC Hydro notes that the type of blanket control described above in its recommendations, with exemptions being provided by regulations or directly by the BCUC is common in other regulatory contexts, a prime example being the area of securities regulation and the powers given to the British Columbia Securities Commission.



July 14, 2011  
Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Resale of Electricity to Tenants with Leases longer than 5 years

Page 6 of 6

As stated in the beginning of this submission, BC Hydro is not supportive of the course of action proposed in the BCUC's letter of June 29, 2011, which would see the Act amended to allow for an automatic exemption from regulation for utility customers who have tenants with leases that are greater than five years. Section 9.2 of BC Hydro's Tariff is not an adequate substitute for this, in BC Hydro's view. As an alternative, BC Hydro believes that the BCUC should instead petition the government to change the Act to allow the BCUC to have the power to exempt persons from public utility regulation, on terms and conditions specified by the LGIC by regulations under the Act (if thought fit), without the need for LGIC approval.

For further information, please contact Fred James at 604-623-4317 or by e-mail at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Janet Fraser".

Janet Fraser  
Chief Regulatory Officer

fj/ma

Enclosure (1)

Copy to: **FortisBC**  
Attention: Dennis Swanson  
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