June 5, 2018

Patrick Wruck
BCUC Commission Secretary
Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3

Sent via eFile

Re: British Columbia Utilities Commission – An Inquiry into the Regulation of Electric Vehicle Charging Service – Project Number 1598941 – Information Request No. 1

Dear Mr. Wruck:

Further to my March 15, 2018 filing of written evidence with respect to the above-noted Inquiry, and further to British Columbia Utilities Commission (BCUC) Information Request No. 1, I have responded to your questions in the document below.

I have entered my responses marked 'Reply:' below each question, and one new comment at the end.

If you have any questions regarding my responses, please contact me.

Sincerely,

Original signed by:

Bruce Mackenzie

Enclosure

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British Columbia
Utilities Commission

British Columbia Utilities Commission
An Inquiry into the Regulation of Electric Vehicle Charging Service

INFORMATION REQUEST NO. 1 TO BRUCE MACKENZIE *with RESPONSES*

A. BASIS FOR EV CHARGING SERVICE REGULATION EXEMPTION

1.0 Reference: Exhibit C32-2, p. 2
Basis for regulation

On page 2 of Exhibit C32-2, Bruce Mackenzie (Mackenzie) states:

> The Commission's goal should be to apply only as much regulation as is required for safety and to avoid fraud and monopoly price gouging. The market mechanisms that regulate the current sale of gasoline should be transplanted to the sale of electricity, allowing competition for service and price to the consumer. Regulate only enough to prevent price gouging from monopolistic or anti-competitive behaviour.

1.1 Please comment on whether the principles of safety, fraud and monopoly price gouging should apply to all entities that provide EV charging services, or should regulated public utilities (e.g. BC Hydro and FBC) be subject to different criteria or treatment than third-parties (e.g. AddÉnergie, ChargePoint, or Greenlots).

1.1.1 To MacKenzie's understanding, what regulation is currently in place for the sale of gasoline, and how should that be applied to regulating the sale of electricity?

Reply: I have no expertise in regulation of gasoline sales. I note that gasoline prices are regulated by governments in the Atlantic provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador but I do not know the history and have no opinion on the effectiveness of its regulation.

I understand that Measurement Canada ensures goods and services like gasoline are measured accurately, by site inspections and authorizing certain private sector Service Providers to certify that dispensing devices are accurate. If the Utilities Commission and ultimately the BC Government allows independent retailers to re-sell electricity to casual customers, I would hope that Measurement Canada would consult with providers of electricity measurement equipment and electricity retailers to ensure accuracy of measurement. Until this occurs, commercially available meters are probably accurate enough.

There must also be safety regulations in regard to sale of gasoline but again I have no expertise. I would hope that CSA and/or UL would certify wiring and connectors for electricity re-sale similar to the safety standards for plug-in electric vehicles.

1.2 Please elaborate on price gouging. Is the concern related to how much public utilities are charging electric vehicle (EV) infrastructure site hosts, or how much EV charging stations are charging end users, or both? Please explain.

Reply: Public utilities are regulated by the Commission and I will trust the public process to set reasonable rates.

My concern is in regards to EVSE stations and end users, although I do not have a concise definition of 'price gouging' in this context. It would apply where a vendor sets a price much higher than his costs because his customers do not have access to alternatives (monopoly) and demand is not sufficiently elastic to drive lower prices. This might be a single vendor in an isolated small town with no competitors, or a landlord of a rental building who controls the electrical connections.

1.2.1 If Mackenzie is concerned about how much EV charging stations are charging end users, would setting a price ceiling on the resale of electricity alleviate this concern? Why or why not?

Reply: Setting a price ceiling would obviously prevent excessive prices, but might also limit entrepreneurial innovation. In general I support a free market unless there are tendencies to monopoly or oligopoly which enable unfair pricing or conditions of sale.

2.0 Reference: Exhibit C32-2, p. 1
BCUC Thermal Energy System Guidelines (TES Guidelines), p. 7
Class of cases exemption

On page 1 of Exhibit C32-2, Mackenzie states: "The Commission should be advising Government to change the Utilities Commission Act to allow strata corporations to charge for electricity by the kWh."

On page 7 of the BCUC's Thermal Energy System Guidelines (TES Guidelines), it states:

> Strata Corporation TES [1]: A TES owned or operated by a Strata Corporation, or the Strata Corporation's lessee, trustee, receiver or liquidator, that supplies the Strata Corporation's owners, is exempt from Part 3 of the UCA other than sections 42, 43 and 44.

2.1 The BCUC is able to grant "class-exemptions" for certain groups under section 88.3 of the *Utilities Commission Ac*t (UCA) to remove regulatory requirements of the UCA. Please comment on the benefits or otherwise of a class-exemption for strata. Please discuss whether the class-exemption should be full or partial, and whether it should apply to all levels of charging.

Reply: The requirements to function as a fully regulated utility under the UCA are far beyond the capabilities of residential stratas, which usually directed by volunteer councils. I do not have adequate experience to suggest to the BCUC what means is most appropriate to remove these requirements, but there must be an exemption.

Adding "*or residents of a strata condominium*" after the 'tenant' exemption in Section 9.1 of the BC Hydro Electric Tariff (April 1, 2017) would appear to give stratas the ability to resell electricity to their residents in the manner that landlords can currently, with the proviso that they could not sell at a higher price than what BC Hydro would have charged the residents.

In regards to levels of charging: From evidence I have seen in this Inquiry, it seems likely that residential stratas would mostly provide overnight charging or top-ups for occasional visitors, which will be met by Level 1 or Level 2 EVSEs. The cost of installation and demand charges for Level 3 (DCFC) equipment would be prohibitive for residential stratas, so Level 3 need not be considered in the foreseeable future.

2.2 In Mackenzie's view, should an exemption similar to the Strata Corporation exemption in the TES Guidelines be considered for MURBs/Strata Corporations if EV charging service were to be

[1] As defined by the Strata Property Act [SBC 1998]

regulated by the BCUC? Please discuss.

Reply: This question hinges on whether strata corporations can be trusted to assess the costs of EVSE - capital for installation, ongoing maintenance, billing and invoicing, and the electricity itself - to the vehicle owner fairly.

In theory, a lack of BCUC regulation will preserve greater flexibility, innovation and responsiveness to local conditions. Given the diversity of strata corporations and their buildings, no fixed rate would fit them all. And it seems unlikely that any external agency would have enough time and staff to set fair, different rates for their differing circumstances.

The Strata Property Act (SPA) Regulation (section 6.9) states that fees for the use of common property or common assets must be set out in bylaws or rules ratified by a 3/4 vote of owners at a general meeting, and must be 'reasonable'. There is no definition of 'reasonable', so I looked to case law.

Strata disputes were argued in the BC Supreme Court until 2017 when this was transferred to the Civil Resolution Tribunal.

I found one detailed consideration of user fees in a CRT case "Cody Watson v. The Owners, Strata Plan BCS 1721"[2], neutral citation '2017 BCCRT 10' dated 2017-02-28. In this case the tribunal went into great detail to calculate that the actual costs to the strata of a move-in were much less than the fee the strata charged, and ordered the fee refunded.

Another BC Court of Appeal case 'Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259' [3]reference 2004 BCCA 597 was not about user fees per se. It suggests that to 'relieve the owner of a strata lot of the act of a strata corporation, the act must be 'significantly unfair'.

The online 'Condo Manual' summarises a relevant 2011 Supreme Court of BC case 'The Owners, Strata Plan LMS 3883 v. De Vuyst', reference 2011 BCSC 1252 [in part]:

> *"… When establishing a user fee, a strata corporation must be able to justify the fee on the basis of one or more grounds, each of which must itself be reasonable. For example, it is not sufficient for strata council to set a user fee on the basis that council members feel the amount is fair. Instead, strata council must be able to point to one or more independently verifiable reasons that justify the fee, and each reason given should itself be a reasonable consideration. The strata council might, for instance, base the user fee on the cost to the strata corporation to provide the service in question."*[4]

If we can count on these precedents, then a strata must be prepared to justify a user fee on the basis of its actual costs to provide a service. When all owners share a building and only some have EVs this seems the best option.

Section 2.2.2 of the Thermal Energy System Guidelines – which I have only learned about through this IR - essentially takes this approach for strata corporations. It states that strata 'customers' can find recourse through the Strata Property Act and is therefore exempt from regulation by the BCUC. A TES would likely be more complex than EVSE so if this approach is working for TES then it should work for EVSE. I could find no references to disputes between owners and stratas over TES's.

[2] https://decisions.civilresolutionbc.ca/crt/crtd/en/item/229957/index.do
[3] http://www.courts.gov.bc.ca/jdb-txt/ca/04/05/2004bcca0597.htm
[4] https://www.condomanual.ca/condominium-manual-updates/tcm-online-update-user-fees/

1.3 Addendum: Capital Costs for EVSE Installation in Existing MURBs

This is an additional point not in response to the questions above:

Capital costs of EVSE installations in existing Multi-Unit Residential Buildings (MURBs) could well be a more difficult problem than electricity rates, especially if an existing MURB's electrical system only has capacity to support a small number of charging points due to capacity (kW) limitations.

A strata council may be reluctant to grant permission to install equipment for the first few owners who apply, if it will be impractical or cost-prohibitive for future owners to do the same. The council may fear that granting access to the first group would be preferential treatment not available to other later applicants, consider it unfair, and choose to keep a level playing field by rejecting all applicants.

I do not have a remedy to suggest for this situation, although EVSE that can load-share across multiple vehicles could help by reducing peak demand on the building.