



bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

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Sent via email/eFile

BCUC REGULATION OF ELECTRIC VEHICLE CHARGING SERVICE INQUIRY EXHIBIT A-35
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To: Registered Interveners

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

Further to the June 27, 2018 Procedural Conference and the written submissions received from participants, enclosed please find British Columbia Utilities Commission Order G-119-18 with reasons for decision and the Regulatory Timetable.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/dg

Enclosure



ORDER NUMBER
G-119-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

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

BEFORE:

D. M. Morton, Commissioner / Panel Chair
A. K. Fung, QC, Commissioner
H. G. Harowitz, Commissioner

on July 4, 2018

ORDER

WHEREAS:

- A. By Order G-10-18 dated January 12, 2018, the British Columbia Utilities Commission (BCUC) established an inquiry into the regulation of electric vehicle charging service (Inquiry) pursuant to section 82 of the *Utilities Commission Act* (UCA);
- B. By Order G-19-18 dated January 23, 2018, the BCUC established the Regulatory Timetable for the Inquiry, which included intervener and interested party registration, deadline for interveners to file written evidence and further process to be determined. The BCUC issued a preliminary scope of the Inquiry attached as Appendix B to that order;
- C. By letter dated February 7, 2018, the BCUC established the dates and locations for a series of community input sessions to hear comments from the public on the issues raised in the Inquiry;
- D. By letters dated February 7, 2018 and March 1, 2018, the BCUC extended the deadlines for intervener registration and the filing of intervener evidence, with further process to be determined;
- E. Between March 2, 2018 and March 16, 2018, the BCUC received written evidence from interveners;
- F. By Order G-67-18 dated March 29, 2018, the BCUC amended the Regulatory Timetable to include one round of information requests (IR) with responses to be filed by June 6, 2018, and with further process to be determined;
- G. Pursuant to the Regulatory Timetable established by Order G-96-18 dated May 18, 2018, a Procedural Conference was held on June 27, 2018, to address various procedural issues; and

H. The BCUC considers that establishing the Regulatory Timetable for further process in the Inquiry is warranted.

NOW THEREFORE for the reasons attached as Appendix A to this order, the BCUC establishes the Regulatory Timetable as set out in Appendix B to this order, and the three scoped items for final and reply arguments for Phase One.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of July 2018.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachments

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

REASONS FOR DECISION

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1.0 Background

On January 12, 2018, the British Columbia Utilities Commission (BCUC) established an Inquiry into the regulation of electric vehicle (EV) charging service (Inquiry). The rate design and rates for EV charging, including the services provided by EV charging stations, are currently in an early development stage in BC and other entities may emerge over time to provide EV charging service. The Inquiry set out to explore the potential regulatory issues, including the level of regulation necessary in the EV charging stations market, the rates for EV charging service, and any other matters that should be considered by the BCUC.

In its letter dated January 12, 2018 (Exhibit A-1), the Panel provided a list of potential regulatory issues for context into the matters that may be reviewed during the Inquiry. Through intervener evidence, information requests, and the series of community input sessions across the Province, the Panel received submissions on these preliminary scope questions along with various other concerns.

In order to refine the scope of the Inquiry, the Panel provided a draft Expanded Inquiry Scope in Appendix A of its letter dated June 15, 2018 (Exhibit A-34). The draft Expanded Inquiry Scope was intended to help interveners consider the scope of the Inquiry in advance of making their submissions to the Panel at the June 27, 2018 Procedural Conference.

Pursuant to the regulatory timetable established by Order G-96-18, the Procedural Conference was held on June 27, 2018, to address various procedural issues, including the appropriate scope of the Inquiry, whether the existing evidentiary record is adequate for the Panel's report, the appropriate regulatory process, the timeline of any subsequent process, and whether any other procedural or scope matters should be considered.

The following parties made appearances and participated at the Procedural Conference:

- British Columbia Hydro and Power Authority (BC Hydro)
- Clean Energy Association of British Columbia (CEABC)
- Drive Energy Inc.
- City of Vancouver
- B.C. Sustainable Energy Association and Sierra Club of B.C. (BCSEA)
- Recharged Technologies Inc.
- Urban Development Institute (UDI)
- FortisBC Inc. (FBC) and ForticBC Energy Inc. (FEI)
- Vanport Sterilizers Inc.
- Greenlots
- Mr. G. Guthrie
- British Columbia Ministry of Energy, Mines and Petroleum Resources (MEMPR)
- AddÉnergie Technologies Inc. (AddEnergie)
- British Columbia Old Age Pensioners' Organization, *et al.* (BCOAPO)
- B.C. Scrap-It Society
- Commercial Energy Consumers Association of British Columbia (CEC)
- ChargePoint
- Tesla Motors Canada ULC (Tesla)
- Vancouver Electric Vehicle Association (VEVA)
- Community Energy Association (CEA)

In addition, Brightside Solutions Inc. (BSSI) and Mr. Flintoff filed written submissions on the agenda items of the Procedural Conference.

2.0 Submissions by the parties

The Procedural Conference addressed procedural matters for the Inquiry. Participants submitted comments on various scope items and options for the regulatory review process. Generally, interveners view that the evidentiary record is adequate. Intervenors suggested that the Panel proceed to final arguments or a preliminary report, subject to the comments made by interveners regarding scope that was provided for discussion in Appendix A of Exhibit A-34. With respect to scope, the Panel received submissions on a potential phased approach to focus on certain issues. Certain interveners also desired hosting workshops to discuss certain topics.

The sections below summarize the submissions of the parties.

2.1 The appropriate scope of the EV Inquiry

While the BCUC received submissions that the items presented in the draft expanded scope is generally appropriate, some interveners are of the view that the scope should be narrowed at this stage of the Inquiry.

Issues of focus

A number of interveners are of the view that the BCUC should focus on issues that are essential and of priority,¹ rather than resolving all issues relating to the EV market at this time. ChargePoint suggests there are three “threshold issues”: whether the BCUC has jurisdiction to regulate third-party EV charging stations; whether the BCUC should exercise that jurisdiction or forebear from regulation; and if the BCUC decides that it should regulate, what form of regulation should apply.² Other submissions identified additional priority issues, including the role of public utilities such as BC Hydro and FBC in providing EV charging services, the inclusion of EV charging stations in rate base,³ and the interpretation of section 18 of the *Clean Energy Act* and section 4 of the *Greenhouse Gas (Clean Energy) Reduction Regulation (GGRR)*.⁴ Moreover, MEMPR seeks clarification as to how the BCUC could come to a conclusion regarding the degree to which government policies should guide public utility investments.⁵

The intent to focus on certain issues is to have the BCUC provide outcomes on certain regulatory matters in an expeditious manner. For instance, Tesla, ChargePoint, AddEnergie, CEA and BCSEA submit that BCUC’s findings in the EV Inquiry will impact the private sector’s business decisions.⁶ MEMPR submits that a number of provincial government initiatives are currently underway, including future EV infrastructure investments and program, climate action planning, and low carbon fuel standards, which might be influenced by the outcome of the Inquiry.⁷ Intervenors believe that broader issues, such as resource planning, rate design of BC Hydro/FBC, cross-subsidization between EV and non-EV customers, are important topics but could be more appropriately addressed in subsequent phases of this inquiry or through a separate process.⁸

¹ Transcript vol 9, BCSEA, pp. 561, 661; FBC, pp. 578-579; VEVA, pp. 633-634; Guthrie, p. 656.

² *Ibid.*, ChargePoint, pp. 622-624.

³ *Ibid.*, BCSEA, pp. 562, 662; UDI, p. 573; FBC, pp. 580-581.

⁴ Exhibit C4-10, Flintoff, pp. 1-3.

⁵ Transcript vol 9, MEMPR, p. 600.

⁶ *Ibid.*, BCSEA, pp. 561, 569; AddEnergie, p. 606; Tesla, pp. 629-630, 649; ChargePoint, p. 624; CEA, p. 643.

⁷ *Ibid.*, MEMPR, p. 595.

⁸ *Ibid.*, BCSEA, p. 565; UDI, pp. 572-573; MEMPR, pp. 599-600; FBC, pp. 580; CEA, p. 642; ChargePoint, p. 650.

However, some interveners submit that the expanded scope of issues in Exhibit A-34 is appropriate and provide various comments for clarification and modification.⁹ BC Hydro submits that the list of scope items is extensive and covers the issues that are likely to be of interest to the Panel, and that any narrowing of the scope at this stage would presuppose outcomes of the inquiry.¹⁰ AddEnergie suggests that the BCUC should consider whether a special rate schedule is appropriate for EV charging stations¹¹. CEABC further suggests that such rate schedules should account for the fact that public utilities (e.g. BC Hydro or FBC) are competing with site hosts in the EV market¹². UDI and the City of Vancouver are concerned that EV charging services in multi-unit buildings would not be addressed if the Panel decides to remove certain scope items.¹³ Greenlots recognizes the desire to address priority issues in the near term but cautions that the fundamental broader issues identified in the EV Inquiry will need to be resolved at some point.¹⁴

Definition of public utility

Related to scope, interveners provided comments on the definition of a public utility under the UCA. MEMPR suggests that the Inquiry should clarify that only public EV charging services provided “for compensation” are included within the scope of the Inquiry.¹⁵ However, CEABC suggests that the definition of public utility is not clear in the UCA, providing an example that if a mall owner installs EV charging stations and provides the free charging service, somebody has had to pay for the capital and electricity costs. Therefore, the idea of “for compensation” can cover something that looks free, but it is actually not. CEABC’s concerns stem from the difficulty in determining whether EV charging stations in strata buildings are being provided for compensation or not. CEABC suggests that the BCUC not look at a narrow concept of “for compensation” but at a level of EV charging station regulation in any event.¹⁶

2.1.1 Panel discussion

The Panel acknowledges the diverse viewpoints and helpful input of the interveners. The Panel also observes that all interveners appear to agree that the priority issue for the Panel to address at this stage of the Inquiry is whether service providers that are not otherwise a public utility should be regulated by the BCUC if they own or operate any EV charging stations and they provide that service for compensation. For the most part, interveners did not discount the fact that other issues are still at play, and agree that the expanded scope contains important issues that need to be addressed if not right away, then at some point down the road in any event.

In accordance with the UCA,¹⁷ “**public utility**” means a person, or the person’s lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation. The UCA also sets out other provisions to define whether a person is or is not a public utility. Thus, the Panel notes that based on the UCA’s current wording, an owner or operator that provides EV charging service for compensation is by

⁹ Transcript vol 9, City of Vancouver, p. 554; UDI, pp. 573–574; Greenlots, pp. 588–589; AddEnergie, pp. 604–605; BCOAPO, p. 608; B.C. Scrap-It Society, p. 611; CEC, pp. 614, 619; Exhibit C23-5, BSSI, p. 1.

¹⁰ Ibid., BC Hydro, pp. 549, 676.

¹¹ Ibid., AddEnergie, p. 605.

¹² Ibid., CEABC, p. 670.

¹³ Ibid., UDI, pp. 657–658; City of Vancouver, p. 665.

¹⁴ Ibid., Greenlots, pp. 657–658.

¹⁵ Ibid., MEMPR, p. 597.

¹⁶ Ibid., CEABC, pp. 668–669.

¹⁷ http://www.bcclaws.ca/Recon/document/ID/freeside/00_96473_01#section99

definition a public utility under the UCA. Thus if one provides charging services for compensation, then the UCA requires the BCUC to regulate unless an exemption is granted.

The definition of compensation provided in the UCA is:

"compensation" means a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly, and includes a promise or undertaking by a public utility to provide service as consideration for, or as part of, a proposal or contract to dispose of land or any interest in it;

The Panel recognizes that interveners presented different interpretations of what “for compensation” means. CEABC provides the mall example, where the charge for apparently free energy is recovered in other services provided. The Panel also wishes to illustrate two other local current examples for consideration – (i) the Vancouver International Airport (YVR) provides free EV charging service, including DCFC stations, and the customer pays the posted discounted parking rates¹⁸; and (ii) Cafés provide to their paying customers free electricity to charge their electronic devices. Would that make either YVR or the café a public utility? Clarity on the issue of the “for compensation” element requires further legal interpretation and argument.

2.2 Adequacy of the evidentiary record given the scope

Most interveners are of the view that the evidentiary record is sufficient and contains a significant amount of information submitted by interveners, letters of comment, and via community input sessions representing public utilities, ratepayers, EV owners, EV charging providers, and governments.¹⁹ BCSEA submits that the record is sufficient for the narrowed scope for the Panel’s report but not sufficient to address an expanded scope.²⁰ FBC believes that the material gathered currently is sufficient to move forward and the developing EV charging service market will likely need to be re-examined in the future.²¹

However, the CEC submits that the record may be adequate but could be improved and suggests that workshops can be held on specific topics.²² MEMPR views that any gaps in the evidentiary record at this time may be attributed to simply a lack of available information in an early EV market rather than a failure to submit information²³.

2.3 Submissions on further process

A number of interveners propose that the Inquiry should proceed to final and reply arguments.²⁴ On the other hand, FBC proposes that the BCUC prepare a preliminary report that addresses the in scope items, with interveners’ comments to follow.²⁵ FBC explains that a preliminary report avoids an exchange of over 30 sets of submissions and that parties can provide comments on an ordered framework to consider in preparing a final

¹⁸ <https://www.plugshare.com/location/15724>; <http://www.yvr.ca/en/updates/electrical-vehicle-charging-stations>

¹⁹ Transcript vol 9, BC Hydro, pp. 550–551; CEABC, p. 552; City of Vancouver, p. 555; FBC, p. 582; MEMPR, p. 602, BCOAPO, pp. 607–608; Tesla, pp. 632–633; VEVA, p. 640.

²⁰ Ibid., BCSEA, p. 566.

²¹ Ibid., FBC, p. 582.

²² Ibid., CEC, pp. 615-616.

²³ Ibid., MEMPR, p. 603.

²⁴ Ibid., BC Hydro, pp. 550-551; CEABC, p. 552; City of Vancouver, pp. 555, 666; Greenlots, p. 589; BCOAPO, p. 608; ChargePoint, p. 629; VEVA, p. 639; Exhibit C-4-10, Flintoff, p. 3.

²⁵ Ibid., FBC, pp. 582-584.

report. Many interveners support the preliminary report approach,²⁶ but some raised concerns regarding any process that does not include an opportunity for argument(s) before the Panel issues any report.²⁷ The CEC submits that while some parties may have included arguments with their intervener evidence, other interveners did not do the same, and the Panel should understand all parties' positions before writing the report.²⁸ BCUC staff submits that both approaches by way of final arguments or preliminary report would work.²⁹

UDI suggests there would be benefit in holding workshops on narrower topics such as the issue of EV charging services being installed in new developments.³⁰ Submissions were mixed as to whether workshops should take place before or after the Panel's determination on the first phase,³¹ and whether workshops should be held at all.³² MEMPR suggests that further information regarding workshops would be appropriate and may be better addressed in phase two if the BCUC decides that a phased approach is appropriate.³³

2.4 Timeline for further process

As discussed earlier, many parties indicate the urgency for the Panel's report, including a suggestion for the report to be issued by the early fall of 2018.³⁴ Intervenors view that approximately four to six weeks, or mid-September, after the BCUC renders this decision would be the preferred timeline for final arguments³⁵ plus another two to three weeks for reply arguments.³⁶ As for the preliminary report proposal, FBC suggests a three to five weeks period for comments after the preliminary report is issued.³⁷

3.0 Panel determination

The Panel acknowledges that interveners desire some direction regarding the regulatory regime of EV charging stations, which must be considered in the context of the BCUC's jurisdiction under the UCA. The Panel also recognizes that investment and policy decisions are currently at play and therefore interveners are urging the BCUC to expedite the process by prioritizing important issues in the near term. While there is a broad spectrum of issues that exist in the EV market that need to be addressed, the Panel agrees that they will continue to evolve as the EV market develops or can be dealt with in the future.

The Panel has considered the submissions of the interveners and determines that a phased approach is appropriate. In reaching its conclusion, the Panel considered: (i) the issues that will affect the EV market in the near term and in the future; (ii) the merits of a multi-phase approach; and (iii) the most effective and efficient regulatory process going forward.

²⁶ Transcript vol 9, MEMPR, p. 603; Greenlots, p. 589; Guthrie, 594; AddEnergie, p. 606; Tesla, p. 633; UDI, p. 659; BCSEA, p. 663.

²⁷ Ibid., CEC, p. 620.

²⁸ Ibid., CEC, pp. 651-652; BC Hydro, pp. 672-674.

²⁹ Ibid., BCUC staff, pp. 645-647.

³⁰ Ibid., UDI, pp. 574-575; BCOAPO, p. 653

³¹ Ibid., BCSEA, pp. 662-663; CEABC, p. 668.

³² Ibid., BC Hydro, p. 677.

³³ Ibid., MEMPR, p. 655.

³⁴ Ibid., Greenlots, pp. 589-590.

³⁵ Ibid., BC Hydro, p. 551; CEABC, p. 553; BCSEA, p. 568; ChargePoint, p. 627.

³⁶ Ibid., City of Vancouver, p. 555; BCOAPO, p. 609; VEVA, p. 640; CEA, p. 643.

³⁷ Ibid., FBC, p. 583.

The first phase of the Inquiry will address the following issues:

- Do the words "for compensation" in the definition of public utility mean that a person who does not expressly require customers to pay for charging services but instead recovers the cost of charging from other services provided to the customers is a "public utility"?
- Should entities not otherwise public utilities supplying electricity to EV end users be regulated at all.
- Inasmuch as public utilities such as BC Hydro and FBC to participate in the EV market as owners or operators of EV charging stations, clarity is needed on whether BC Hydro and FBC are permitted to invest in EV charging stations as a prescribed undertaking under section 18 of the *Clean Energy Act* and section 4 of the GGRR.

In the Panel's view, the outcomes of the three issues at this stage of the Inquiry as outlined above will provide some level of certainty that the market desires in the near term. For clarity, the Panel is not precluding any remaining scope items from consideration in the second or future phase of the Inquiry.

With respect to further process, the Panel views that there is sufficient information in the record regarding the three Phase One scope items as outlined above. Thus, the Panel finds that there is no need for further process at this stage of the Inquiry to gather incremental evidence with regard to phase one issues. The issues in phase one are now narrower in scope and therefore should not expend significant amount of resources. **Accordingly, the Panel establishes one round of written final and reply arguments on phase one issues, as set out in the regulatory timetable attached as Appendix B to this order.**

In order to facilitate intervenor's submissions, the Panel invites intervenors to provide arguments on the following straw man regulatory framework:

Entities not otherwise public utilities will, with respect to the provision of electric vehicle charging services, be exempt from Part 3 of the UCA except for sections 25, 26, 38, 42, 43,³⁸ 44, and 49. Entities that are otherwise public utilities may apply for BCUC approval to provide regulated EV charging services.

This potential framework is similar to the exemption granted under Order G-71-16 relating to the Bakerview EcoDairy Ltd. (EcoDairy) application for an exemption to Part 3 of the UCA for EV charging service providers.³⁹ It effectively exempts an entity that is not otherwise a public utility that owns or operates EV charging stations for compensation from regulatory oversight for matters including certificates of public convenience and necessity, expenditure schedules, and rate setting.

The Panel considers that it would be helpful for intervenors to argue their positions in terms of the straw man framework, including any merits, and implications that the BCUC should take into consideration.

³⁸ Excluding 43(1)(b)(ii) where a public utility must provide to the BCUC an annual report regarding demand-side measures.

³⁹ <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=524>

In addition, the Panel invites argument on the following:

1. The legal interpretation regarding the “for compensation” wording within the definition of a public utility under the UCA.
2. Interpretation of section 18 of the *Clean Energy Act* and section 4 of the GGRR as a prescribed undertaking, thereby enabling existing public utilities such as BC Hydro and FBC to provide EV charging services with the inclusion of EV charging stations in their regulated rate base.

Intervenors may also provide arguments on any additional priority issues for the Panel’s consideration in the first phase of the Inquiry’s report. After the final and reply arguments, the Panel will issue a report, expected in October 2018, with its findings and recommendations. The Panel’s findings may lead to making recommendations for a Ministerial Order for certain exemptions from the UCA.

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

REGULATORY TIMETABLE

Action	Date (2018)
Intervener written final argument	Wednesday, August 1
Intervener reply argument	Wednesday, August 22
Issuance of phase one report	October 2018 (estimate)
Further process for phase two	To be determined