August 1, 2018

Commission Secretary
Suite 410, 900 Howe Street
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RE: BCUC Project No. 1598941
Tesla Motors Canada (of Tesla Inc.) Final Intervenor Comments to the BCUC re: 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.

I. Introduction

On July 4, 2018, the British Columbia Utilities Commission ("BCUC") issued the BCUC Regulation of Electric Vehicle Charging Service Inquiry Exhibit A-35. Therein, it implemented a phased approach to considering a variety of issues before it, starting with initial issues to be addressed by intervener written final arguments on August 1, 2018.[1]

As previously communicated, Tesla is the largest operator of high speed EV charging services in the world. In the North American context, there is no jurisdiction that has deemed Tesla or any other third party charging services to be a "public utility." Because of the potential risk that electric vehicle charging stations might be classified as "public utilities," Tesla's expansion plans, along with our local site hosts in British Columbia face a great deal of uncertainty as a result of the BCUC's current inquiry into the regulation of EV charging. This uncertainty has increased significantly since the BCUC's release of exhibit A-35, as part of these proceedings, which states that the BCUC clearly interprets the Utilities Commission Act ("UCA") to require the Commission to deem EV charging services ("EVCSs"), including Tesla Superchargers, as "public utilities" which may trigger a range of obligations and regulatory requirements as a result.

While some utility commissions in North America regulate how traditional utilities use ratepayer funds to build EV charging stations, none have taken it upon themselves to deem privately operated and funded, fully competitive, and non-rate based charging stations as "public utilities." The only the commission that has considered such a drastic approach is the British Columbia Utility Commission.

Admittedly, earlier this July, the Public Utilities Commission ("PUC") of Delaware had a similar proposal before it. However, it unanimously voted to postpone its own hearing process into the regulation of EV charging services for one year in order to give the legislature time to address the lack of clarity in its

[1] Appendix B to Order G-119-18 at 1.

public utility regulations. The Delaware PUC recognized the ambiguity in utility regulations and unreasonable burdens associated with designating privately run EV charging services, whether commercial stations or at workplaces or in condominiums, as "public utilities." The BCUC should, at minimum, do the same.

The BCUC's current interpretation will result in a significant reduction in private sector charging investment in BC and surrounding provinces. It will further risk transferring the cost of building charging infrastructure increasingly to ratepayers and the public sector and away from private investors who will have no interest or capacity to be regulated as Public Utilities with or without certain exemptions being granted. Given the major policy implications of such an interpretation Tesla recommends that:

(1) the BCUC reconsider its interpretation of the definition of "public utility," taking into account a number of factors identified in the arguments below and previously by several parties, including the likely burdens, unintended consequences, and problematic outcomes that result from the present interpretation. The BCUC should consider the historical context in which the Utilities Commission Act was drafted—at a time when EVs were not a viable technology.

(2) despite the business uncertainty this proceeding has already created, decisions on the inquiry should be deferred until the Cabinet has an opportunity to consider the significant public policy implications on EV adoption and economic development related to the BCUC's potential regulatory actions on this matter.

(3) despite the business uncertainty this proceeding has already created, decisions on the inquiry should be deferred for at least one year until clarity on the definition of "public utility" can be provided from the government and/or confirmed by the legislature.

Utility commissions were originally established across North America to regulate government-owned or -enabled monopolies and to ensure that *ratepayer* funds were used by those monopolies fairly and responsibly. **Tesla is not a monopoly and Tesla's charging services are not developed or operated with ratepayer funds (or any public funds for that matter). Tesla is itself a ratepayer to utilities.** Under any reasonable interpretation, Tesla is not itself a utility. Private entities, investing private dollars which use no ratepayer or public funds should not be considered "public utilities." Furthermore, given the substantial policy implications of designating private EVCSs as "public utilities" with regard to EV adoption and economic development in the province, this matter deserves careful consideration by the Cabinet and Legislature directly.

Regulating EV charging services provided by existing, traditional regulated public utilities is perfectly reasonable, but regulating *competitive* EV charging services through the BCUC, even with certain exemptions, is not. Tesla's charging services are already governed by a wide range of consumer protection legislation and regulation, competition law, electrical safety codes, zoning, and utility approvals. Together,

these rules have already created a safe and fair regulatory environment for EV charging operators to function in your province. As a ratepayer itself, Tesla wants to ensure that the BCUC is overseeing the appropriate use of ratepayer funds by traditional monopoly utilities that use ratepayer dollars to provide charging services. However, as conveyed through Tesla's past evidence, other governance and consumer protection mechanisms exist that govern private participants in the EVCS charging marketplace. The BCUC need not add a layer to that without rhyme or reason and that results in significant burden to the industry.

Comments on Exhibit A-35

The BCUC has identified that the following issues are to be addressed in this first phase:

(1) 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"?

(2) Should entities not otherwise public utilities supplying electricity to EV end users be regulated at all?

(3) 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.

The BCUC also provided the following straw man framework and asked for argument on it.

> 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.

The BCUC explained that "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. 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 interveners to argue their positions in terms of the straw man framework, including any merits, and implications that the BCUC should take into consideration."[2]

[2] Exhibit A-35 at 7.

II. Argument

A. 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"?

No. Under the UCA, "'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." Regardless of whether the reader applies a strict, plain meaning reading of the statute or one that more thoughtfully looks at intent and context, neither leads to a reasonable conclusion that the UCA is defining electric vehicle charging as a public utility.

As guiding principles of statutory interpretation, Section 10 of the *Interpretation Act*[3] requires interpretation of statutes "so that effect may be given to the enactment according to its true spirit, intent, and meaning." Further, "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[4]

Defining an electric vehicle charging station as a public utility is not a reasonable outcome and cannot be in accord with these guiding principles.

1. The Plain Meaning Approach

If taking a strict plain language approach, the Plain Meaning or Literal Meaning rule in Canadian statutory interpretation governs the interpretation of statutes where there is no ambiguity.[5] If the definitions in the statute are not ambiguous, they should be read directly rather than attempting to expand the definitions of the activities that occur in time-based payments that also receive complimentary electric vehicle charging. An EV charging station does not literally perform any of the activities listed in the "public utility" definition in exchange for compensation.

Addressing the clearly inapplicable terminology in the UCA first, EVCSs do not "generate, store, transmit, or sell electricity for the production of light, heat, cold, or power to the public for compensation."

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[3] R.S.C. 1985, c. l-21.
[4] *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47, at paragraph 18 ("Wilson").
[5] Pierre-André Côté, The Interpretation of Legislation in Canada, 2nd ed. (Cowansville, Quebec: Les éditions Yvon Blais, 1992) at pp. 237-255.

Electricity is not sold at EVCSs because there is no transaction for a rate of electricity (i.e.-kilowatt-hours). On the contrary, Tesla's customers pay for time at a parking spot (if they pay anything at all) and the EV charging aspect of the service is complimentary (i.e.-not for compensation).

The BCUC has not indicated which terms in the UCA it claims apply to EVCS practices. If they are "delivery or provision of electricity….or any other agent for the production of light, heat, cold, or power..." these terms are not dispositive of the issue from a plain reading of the language, either. Again, *electricity* is not delivered or provided in exchange for compensation. At present, most Tesla charging sessions are entirely complimentary. In the instances where fees are levied, they are levied for time and parking.[6] Further, if "any other agent" applied to time and a parking space,[7] time and a parking space are not supplied for the *production* of light, heat, cold, or power for compensation. They are supplied for themselves and the customer receives complimentary charging. **Furthermore, functionally, an electric vehicle stores a chemical battery charge for the sake of *mobility and transportation*; not for *producing* light, heat, cold or power like these terms would ordinarily be used to refer to providing electricity delivered to a home.** The equipment EV charging providers operate can only charge electric vehicles. The operators do not provide electric service for all inhabitants and electrical equipment within the area they operate. Instead EV operators serve a limited number of consumers that have invested in electric vehicles, including consumers that reside in other provinces or countries, but happen to drive and charge their vehicles in BC.

A well-reasoned, plain meaning reading of the UCA's definitions of "public utility" and "compensation" do not result in EV charging services being classified as services of a public utility or a public utility in exchange for compensation. The BCUC should not reach to come to such an unreasonable conclusion.

2. The Contextual Approach

Arguably, many of the terms in the definition of "public utility" are ambiguous, especially when applied to the facts related to EV charging stations.

If the words are apparently obscure or ambiguous, then a meaning that best accords with the intention of Parliament, the object of the Act and the scheme of the Act, but one that the words are reasonably capable of bearing, is to be given them.[8] The consideration of absurd results has been relied on by judges to warrant departure from what is acknowledged to be a plain meaning.[9]

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[6] It would, however, be in the public interest to have legislative amendment made to the definition of "public utility" such that those EVCSs that use no ratepayer funds may levy fees on a kWh basis without being deemed "public utilities." Consumers are used to paying an all-in price for mobility fuel (e.g. gasoline) that is levied on a volumetric basis and which covers a site's operating costs, capital depreciation, reserves, etc. A volumetric-based measurement better enables customers to compare prices. When paying on a time-only basis a customer has little ability to compare pricing as they may not know the power output of a station. Stations with lower power outputs may appear to have less expensive parking, but will require a longer stay resulting in a higher overall cost and lost productivity for the driver.

[7] Which would be a dramatic extension and application of the use of the words.

[8] [1995] 1 SCR 686 Para 3 ("McIntosh").

[9] *See R. v. Paul* [1982] 1 S.C.R. 641, at pp. 662-664.

The BCUC is not compelled to regulate EVCSs because it is not plain from the statute that they fit within the statutory "public utility" or "compensation" framework. As stated above, when there is ambiguity, the BCUC and the courts may look to reasonable alternatives to avoid absurd results. In this instance, the results are also counter-productive and not in the public interest.

In reference to the terms used in the UCA definition of "public utility," Tesla notes that the UCA does not provide a definition for the term "production." The use of the word "production" is an odd and ambiguous use of this term, especially if applied to the EVCS context. Regardless of all the other terms in the statute, nothing is conveyed to an electric vehicle customer for the "*production* of light, heat, cold, or power…" An EV customer gets a parking spot for an allotted amount of time. In exchange he or she can charge the battery in an EV for transportation purposes. Arguably, the use of the word "production" makes no sense in this context or is ambiguous at best. Accordingly, then a reasoned contextual approach to reading the statute should apply. A reasonable reading of the statute that considers context and avoids absurdity cannot possibly conclude that EVCSs should be regulated as public utilities.

When considering a contextual application, Tesla's customers pay for *time* at a parking spot (if they pay anything at all)[10] and the EV charging aspect of the service is complimentary (i.e.-not for compensation). This is the same practice as "cafés that provide to their paying customers free electricity to charge their electronic devices" that the BCUC recognized in its Exhibit A-35.[11] Tesla thanks the BCUC for the thoughtful recognition of the unfavorable result that follows from a forced and unreasonably expanded interpretation of the UCA's applicability. Surely the legislature did not intend for the BCUC to regulate cafes as public utilities in the scenario above. Further, the legislature did not contemplate EVCSs when the UCA definition of "Public Utility" was drafted and it should not apply to EVSC here. As yet another example, the single and limited service of an EVCS is similar to a laundromat that provides heat only for drying clothes. Although a laundromat could ostensibly be considered a "public utility" under Part 3 of the UCA, it is not a public utility—nor should it be under any reasonable or measured approach.

Additionally, to the extent that fees are recovered by EVCSs, they are also *below* the costs of recovery for the infrastructure and void of any profit. Cost recovery and a reasonable return are hallmark characteristics of what traditionally regulated utilities do and what they are entitled to receive. Tesla's EV charging network fee structure is wholly distinct. The BCUC should respectfully take this into consideration. These are dramatically different entities. They should not be treated the same.

Candidly, there is no pressing legislative or statutory directive to treat electric vehicle charging as if it were the same thing as a regulated electric utility in the reasonable sense of the word. On the contrary, this is a strained attempt to shoehorn electric vehicle charging into the public utility

[10] The large majority of Tesla's Model S and Model X customers do not pay any fees for using a Tesla Supercharger Station as lifetime free Supercharging was included with the purchase of the vehicle.

[11] Exhibit A-35 at 5.

legal construct and it is unwarranted. The results would truly be excessive and detrimental for the industry and its customers. The BCUC also thoughtfully noted that there is a need in the industry for certainty for investment and policy decisions.[12] But to the extent that the BCUC seeks to enhance access to electric vehicles for environmentally beneficial causes, its current posture only stands to frustrate such positive efforts. It is simply nonsensical and unnecessary.

If the BCUC were to regulate EVCSs as public utilities, it would be the only jurisdiction in North America to do so. It would also be contrary to the direction that Ontario has proceeded on this matter.[13] Canadian provinces should implement consistent policies across the country to allow for even infrastructure development of long range travel support networks. BCUC's current direction flies in the face of progress. It is also contrary to a contextual and reasoned interpretation of the UCA.

B. Should entities not otherwise public utilities supplying electricity to EV end users be regulated at all?

Tesla respectfully disagrees with the premise of the question because it suggests that EVCSs are not regulated at all at the current juncture. This is incorrect. Charging services are currently governed under a wide range of consumer protection legislation and regulation, competition law, electrical safety codes, zoning, and utility approvals. Together, these rules have already created a safe and fair regulatory environment for EV charging operators to function. Therefore, we interpret this question to mean whether the BCUC should apply *additional* regulation to EVCSs. We believe electric vehicle charging station operators that are not otherwise public utilities should not be subject to BCUC regulation because they are already regulated by several other entities to protect consumers. Further, many EV charging stations, including Tesla's, do not utilize ratepayer funds, and EVSCs are not utilities operating for compensation.

As argued and explained above, Tesla respectfully disagrees with the BCUC's declaration that "an owner or operator that provides EV charging service for compensation is by definition a public utility under the UCA." EV charging activities do not fit into the definition of "public utility" nor are they for "compensation" under a literal or contextual application of the statute. In the Initial Comments and Evidence submitted to the BCUC between March 2, 2018 and March 16, 2018, virtually all interveners recommended that competitive EV service providers should not be regulated as public utilities. Tesla urges the Commission to strongly consider that compelling and overwhelming evidence.

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[12] Exhibit A-35 at 6.
[13] See https://www.oeb.ca/oeb/_Documents/Documents/OEB_Bulletin_EV_Charging_20160707.pdf

C. 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.

Tesla has no additional opinion on this matter beyond what it recommended in its initial comments and evidence. That is, regulated utilities play an important role in enabling the interconnection of charging stations and to develop tariffs for EVCS providers taking service from regulated utilities. The regulated utilities could also potentially play a limited, but meaningful role in EVCS development in less competitive areas such as remote and rural communities and in multi-unit dwellings, if development does not occur through competitive methods. Tesla's experience has shown that it can be extremely challenging for competitive forces to address the needs of these customers and often the only entities that can serve these hard-to-reach customers are the utilities themselves. However, Tesla's preference is that competitive entities develop EVCS development whenever and wherever possible—but more access to charging from more parties generally aligns with the province's public policy objectives for electric vehicles, which Tesla supports.

D. The BCUC Strawman Rule

The BCUC proposed the following straw man 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, 44, and 49. Entities that are otherwise public utilities may apply for BCUC approval to provide regulated EV charging services.

1. The UCA should not apply at all to EVCSs.

The BCUC explained that this would effectively exempt an EVCS that is not otherwise a public utility from regulatory oversight for certificates of public convenience and necessity, expenditure schedules, and rate setting. It would be nonsensical to even attempt apply these traditional public utility regulations to EVCSs. This lends credence to the argument that EVCSs are not public utilities that operate for compensation under the UCA. Rather than attempt to selectively choose aspects of a statute to apply to EVSCs, no aspect of Part 3 of the UCA should apply to EVCSs.

The consideration of this straw man language adds reasoning for why the UCA truly does not and should not apply to EVCSs. If the UCA were meant to apply to EVCSs, then why would it need to exempt applications like CCNs, expenditure schedules, and rate setting? The BCUC does not recommend excluding these items from "public utility" definition applicability to EVCSs in this straw man as some sort of kindness, concession, or accommodation. On the contrary, the proposal is to exempt EVCSs from those items because they would be nonsensical and overly burdensome. These items have nothing to do with how EVCSs operate. For example, it would be an unreasonable endeavor of establishing service territories for public EV

charging providers in the CCN process or obligations to provide retail electric service to a customer that chooses to build a store in the parking lot. Expenditure schedules and rate setting for EVCSs likewise would make no sense because they are not public electric utilities with captive ratepayers.

It is abundantly clear from the entire UCA framework that explains the rights and responsibilities of public utilities that electric vehicle charging stations are simply not public utilities. Their functions and characteristics are wholly distinct. The Commission should not seek to force EV charging into this definition. It was not the intent of the legislature to apply the definition of public utility or compensation in the UCA to EVCSs.

As written, the BCUC's straw man framework would regulate all providers of EVCS, whether the services are provided to customers for free, or services are provided for a compensation based on energy delivered. The BCUC should also keep in mind that several smaller investors in EV charging services, such as site hosts at retail locations, restaurants and hotels, are not interested in operating a "public utility" and simply wish to recoup all or a portion of their own costs in providing an amenity to their customers.[14] Regulating privately invested, non-ratepayer funded, charging stations as "public utilities" will create a significant barrier to entry for these smaller operators who can and should be permitted to play an important role in building BC's EV ecosystem, but would need to spend additional time and money to comply with the BCUC's proposed regulations. Moreover, this may impact the competitiveness of the core business of such site hosts, with more sophisticated and well-resourced companies able to take on the obligations of being deemed a "public utility" while smaller local companies are left behind due to a lack of resources or technical knowledge. Site hosts of all types should retain the ability to privately invest in providing such amenities and services without any additional regulatory burden beyond what already governs the provision of EV charging services.

2. Consideration of each exemption Section provision in the straw man Framework:

Generally, it is obvious from the language of the proposed exemption provisions that they are meant to apply to what is ordinarily thought of as a public utility (power plant, wires, and poles) and so they should not apply to EVCSs. Others relate to additional reporting and responsive obligations to the Commission. While these later proposals are arguably not traditional public utility-specific, they threaten to be quite burdensome and would have a deterrence effect on companies considering entering in to the EVCS space in BC because of cost and time constraints. Moreover, the BCUC would be compelling those companies offering entirely private services, paid for with private funds, to divulge potentially confidential and commercially sensitive business information. While this may be appropriate for charging operators who are utilizing public or

[14] Some interveners have suggested that the BCUC should differentiate regulation between AC and DC charging. Whether the power is delivered using AC or DC methods, the service provided is the same. Differentiation is not appropriate as charging technology is determined by use-case (and the expected reasonable dwell time for a driver at a given location), or to achieve a higher turn-over rate to address volumes of traffic. Differentiating between AC and DC charging would discriminate against certain site hosts and different use cases.

ratepayer funds, it is not appropriate in a competitive market where no such funds are used by the charging operator and where the charging operator is themselves a ratepayer.

The BCUC cites to the 2016 Bakerview EcoDairy Ltd. ("Eco Dairy") order[15] in support of its proposed straw man framework with UCA exemptions to apply to EV charging. Respectfully, Eco Dairy should not have been classified as a public utility for all of the reasons argued above. EVCSs cannot and should not ever be classified as public utilities under the UCA. In the alternative, if the BCUC insists that competitive EV charging providers that implement Eco Dairy's approach (via kWh sales) must be classified as public utilities (albeit with exemptions), then Tesla respectfully asks that the BCUC make it clear that EVCSs (like Tesla) who do not sell electricity (kWh) are **not** "public utilities" under the UCA whatsoever because they are distinct.

In *EcoDairy*, the applicant filed an application for exemption from Part 3 of the UCA in relation to EcoDairy's proposed "resale of electricity via the electric vehicle (EV) DCFC station on its property."[16] EcoDairy stated that it planned "to implement a $0.35 per kilowatt-hour fee for the provision of EV charging services to the public."[17] Thus, in *EcoDairy*, there was an explicitly contemplated sale of electricity on a kWh basis. In contrast, Tesla's current business practices explicitly **do not** sell electricity. Thus, UCA exemptions along the lines of those established in *EcoDairy* would not make sense for Tesla's practices. In sum, the facts of the EcoDairy's approach to offering charging services is distinct from Tesla's—the situations are not comparable. Any reasonable interpretation of the definition for "public utility" established under the Utilities Commission Act does not include privately built and operated EVCSs, but this is especially the case when they do not sell electricity.

As noted above, it would be in the public interest to have legislative amendments made to the definition of "public utility" such that EVCSs that use no ratepayer funds may levy fees on a kWh basis without any risk of being deemed "public utilities." However, in the instant proceeding, Tesla seeks BCUC clarification that EVCSs are not public utilities. At absolute minimum, Tesla seeks clarity that its current time-based business approach does not fall under the UCA or additional BCUC regulation.

a. Commission may order improved service

SECTION 25 If the commission, after a hearing held on its own motion or on complaint, finds that the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory, the commission must (a)determine what is reasonable, safe, adequate and fair service, and (b)order the utility to provide it.

[15] ORDER NUMBER G-71-16, IN THE MATTER OF the Utilities Commission Act, RSBC 1996, Chapter 473 and Bakerview EcoDairy Ltd. Application for Exemption from Part 3 of the Utilities Commission Act for Electric Vehicle Charging Service Providers (May 19, 2019).

[16] *EcoDairy* Order at 2.

[17] Id.

Tesla does not believe that this is necessary and would result in redundant regulation as it relates to EVCSs. It is also unreasonable to direct competitive, non-utility businesses to increase or improve their service. For example, if a charging station were to become congested with high use, it would be unreasonable for the BCUC to tell the operator to increase the number of charging stalls, because there are a variety of factors that would cause the operator to expand or not expand their station. As stated above, charging services are currently governed under a wide range of consumer protection legislation and regulation, competition law, electrical safety codes, zoning, and utility approvals. Together, these rules have already created a safe and fair regulatory environment for EV charging operators to function. Moreover, some prospective site hosts / service providers would have no interest or capacity to participate in such hearings and would not therefore invest in charging infrastructure that they may have otherwise invested in. This would either result in less charging and thus lower rates of EV adoption, or an unnecessary transfer of cost and burden towards the ratepayers of British Columbia.

b. Commission may set standards

SECTION 26 After a hearing held on the commission's own motion or on complaint, the commission may do one or more of the following: (a)determine and set just and reasonable standards, classifications, rules, practices or service to be used by a public utility; (b)determine and set adequate and reasonable standards for measuring quantity, quality, pressure, initial voltage or other conditions of supplying service; (c)prescribe reasonable regulations for examining, testing or measuring a service; (d)establish or approve reasonable standards for accuracy of meters and other measurement appliances; (e)provide for the examination and testing of appliances used to measure a service of a utility.

Much of this section is redundant given the role of Measurement Canada, as it relates to EVCSs. Duplicating regulation is administratively burdensome and will establish yet another barrier to entry for smaller EV charging providers or independent site hosts that are looking to recover some or all of their costs. Moreover, it is unreasonable for the BCUC to set standards for the types of equipment used by private EVSCs. Any standards on the equipment imposed by the BCUC would lead to significant costs, including costs to retrofit existing stations and potentially the existing electric vehicle fleet, since the type of EV charging equipment in BC is utilized throughout North America. A more likely result, however, is that private EVSCs would no longer serve British Columbia.

c. Public utility must provide service

SECTION 38 A public utility must (a)provide, and (b)maintain its property and equipment in a condition to enable it to provide, a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

It is absolutely reasonable to require any site operating or constructed with ratepayer funds to have a minimum obligation to provide working equipment. For competitive, private operators, who have used no ratepayer funds and who are themselves ratepayers, it is appropriate to allow the market pick winners and losers based on site services and reliability. It is not appropriate for a utility commission to regulate the use of private dollars at competitively operated sites.

Furthermore, with regard to "safe" and "just" existing regulatory frameworks exist, as detailed in previous evidentiary submissions and above, including electrical safety codes which already ensure safety, and consumer protection and competition law that protect consumer interests and ensure fair business practices.

d. Duty to obey orders

SECTION 42 A public utility must obey the lawful orders of the commission made under this Act for its business or service, and must do all things necessary to secure observance of those orders by its officers, agents and employees.

Again, with regard to sites that are not ratepayer funded, it is not appropriate for the commission to issue orders. It is just to require ratepayer-funded sites to respond to orders if the commission should feel that ratepayer funds have not been invested properly.

e. Duty to provide information[18]

SECTION 43 (1)A public utility must, for the purposes of this Act, (a)answer specifically all questions of the commission, and (b)provide to the commission (i)the information the commission requires, and (ii)a report, submitted annually and in the manner the commission requires, regarding the demand-side measures taken by the public utility during the period addressed by the report, and the effectiveness of those measures. (1.1)[Repealed 2010-22-64.] (2)A public utility that receives from the commission any form of return must fully and correctly answer each question in the return and deliver it to the commission. (3)On request by the commission, a public utility must deliver to the commission (a)all profiles, contracts, reports of engineers, accounts and records in its possession or control relating in any way to its property or service or affecting its business, or verified copies of them, and (b)complete inventories of the utility's property in the form the commission directs. (4)On request by the commission, a public utility must file with the commission a statement in writing setting out the name, title of office, post office address and the authority, powers and duties of (a)every member of the board of directors and the executive committee, (b)every trustee, superintendent, chief or head of construction or operation, or of any department, branch, division or line of construction or operation, and (c)other officers of the utility. (5)The statement required under subsection (4) must be filed in a form that discloses the source and origin of each administrative act, rule, decision, order or other action of the utility.

For sites that were developed with ratepayer funds or which operate using ratepayer funds it is appropriate to require such reporting and provision of records to the BCUC. For private hosts and EVCS operators these requirements are significant and burdensome and will directly impact the ability for new BC-

[18] The BCUC recommended excluding 43(1)(b)(ii) where a public utility must provide to the BCUC an annual report regarding demand-side measures.

based charging service providers to start up and will discourage site hosts from investing in EV charging. Moreover, for competitive non-ratepayer funded EVCSs, the commission would effectively be demanding commercially sensitive market information which may be given to or used in a manner that would provide traditional utilities with an unreasonable advantage in the competitive marketplace.

f. Duty to keep records

SECTION 44 (1)A public utility must have in British Columbia an office in which it must keep all accounts and records required by the commission to be kept in British Columbia. (2)A public utility must not remove or permit to be removed from British Columbia an account or record required to be kept under subsection (1), except on conditions specified by the commission.

See arguments to (e) above regarding duty to provide information under UCA Section 43 and (g) below regarding "accounts and reports" under UCA Section 49.

g. Accounts and reports

SECTION 49 The commission may, by order, require every public utility to do one or more of the following:(a)keep the records and accounts of the conduct of the utility's business that the commission may specify, and for public utilities of the same class, adopt a uniform system of accounting specified by the commission;(b)provide, at the times and in the form and manner the commission specifies, a detailed report of finances and operations, verified as specified;(c)file with the commission, at the times and in the form and manner the commission specifies, a report of every accident occurring to or on the plant, equipment or other property of the utility, if the accident is of such nature as to endanger the safety, health or property of any person;(d)obtain from a board, tribunal, municipal or other body or official having jurisdiction or authority, permission, if necessary, to undertake or carry on a work or service ordered by the commission to be undertaken or carried on that is contingent on the permission.

Requirements of Sections 44 and 49 would subject some competitive service providers with an unreasonable burden and costs associated with setting up an office in British Columbia for the purpose of record retention. Out-of-province EV charging service providers have likely together invested tens-of-millions of dollars in privately funded EV charging equipment and services and have created a great many jobs in the electrical and construction trades in the process. Tesla does not make a profit on EV charging, and many other competitive providers are working towards profitability. Requiring local real estate and human resources will be extremely burdensome and would likely result in only the largest EV charging providers surviving in the market. This will delay EVCS deployment and does not align with the public policy objectives of the government. This said, combined with the other onerous requirements above, even Tesla would likely be forced to consider ceasing all charging operations that are deemed to be "public utilities" according to the BCUC and regulated accordingly.

III. Conclusion

In summary, the definition of "public utility" does not apply to entities that are not otherwise public utilities—namely: 1) private EV charging end-use service operators, 2) who are ratepayers, and 3) who use no ratepayer funds. If deemed "public utilities," the BCUC's proposed approach will:

- have significant negative ramifications on the BC EV ecosystem;
- slow EV adoption rates;
- increasingly transfer the cost of EV charging investments from the private to the public sector / ratepayers;
- stifle economic development and will duplicate regulatory burden;
- make it harder for local EV charging start-ups to grow while unfairly favouring only the largest existing service providers in the competitive marketplace; and,
- result in the BCUC taking position in in direct opposition to the government's public policy objective of increasing EV adoption rates.

Where ratepayer funds are used, it may be appropriate for the BCUC to regulate the use of those funds and to ensure that certain minimum standards are met by those using these ratepayer dollars. However, it is inappropriate to deem privately funded and operated EVCSs as "public utilities"—especially given that such entities are already regulated for consumer protection, competitive fairness, and safety.

The BCUC should reconsider its proposed interpretation of the definition of "public utility" as it relates to electric vehicle charging stations. The BCUC should take into account the factors identified in the arguments above, including the inapplicability of the strict interpretation of the statute to the actual activities that take place at a charging station. It should alternatively consider the negative results that are avoided by employing a contextual interpretation, and the historical context in which the Act was drafted—at a time when EVs were not a viable technology. As currently proposed, the straw man framework provides little regulatory certainty to EVSCs. For example, it is unclear if any fee, whether it is a subscription charge or fee for parking, levied by an EVSC, would be considered compensation, or whether compensation is strictly payments for a volume of electricity (such as kilowatt-hours) delivered via an electric vehicle charging station. Ultimately, any definition or interpretation of the definition that deems privately built and operated EVCSs, which use no ratepayer funds, as "public utilities" will serve as a barrier to EV infrastructure investment in British Columbia and is not supported by the UCA's statute language. The BCUC should declare that no EVCSs should be classified as public utilities. At bare minimum, the BCUC should make clear that EVCSs who provide parking to customers for free or for a time-based fee, and who provide complimentary EV charging (i.e.-no payments on a kWh basis), **are not public utilities under the UCA**.

There is good reason why no other jurisdiction, including jurisdictions that have no EV supportive government policies, have taken action to deem privately operated charging stations as "public utilities." There is also good reason why the utility commission in Delaware recently took action to defer a decision on

this matter until the legislature could remedy what was obviously a situation that would lead to a negative outcome for EV adoption and which would not be in the public interest.

Finally, and despite the market uncertainty that further delay will inevitably create, should the BCUC not review and revise its interpretation of the Act to exclude regulation of EVCSs, the inquiry's findings should be deferred until the Cabinet has an opportunity to consider the significant public policy implications that will be associated with regulation. In such a case, this deferral should last until clarity on the definition of "public utility" can be provided by the government and/or be confirmed by the legislature.

Yours Sincerely,

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