

**BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT**

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

Project No. 1598941

CITY OF VANCOUVER

FINAL ARGUMENT

1 August 2018

INDEX

1	Introduction.....	1
2	Overview Of the City’s Argument.....	1
3	Response to the Phase 1 Issues	4
3.1	Issue 1: Should entities not otherwise public utilities supplying electricity to EV end users be regulated at all?	4
3.2	Issue 2: 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”?	7
3.3	Issue 3: Inasmuch as public utilities such as BC Hydro and FBC are 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 <i>Clean Energy Act</i> and section 4 of the GRR.....	8
4	Other Considerations	10
5	Conclusion	11

1 **1 INTRODUCTION**

2 1. The City of Vancouver (“**City**”) files this argument in response to the
3 Commission’s Procedural Order G-119-18.

4 2. The City’s argument is organized into two parts:

5 a) An overview of the City’s argument, and

6 b) Specific responses to the issues identified by Commission in the
7 Procedural Order.¹ (“**Phase 1 Issues**”)

8 **2 OVERVIEW OF THE CITY’S ARGUMENT**

9 3. The City supports the Commission’s “straw man” regulatory framework, which
10 reads as follows:

11 Entities not otherwise public utilities will, with respect to the
12 provision of electric vehicle charging services, be exempt from
13 Part 3 of the UCA except for sections 25, 26, 38, 42, 43,38 44, and
14 49. Entities that are otherwise public utilities may apply for BCUC
15 approval to provide regulated EV charging services. (“**Proposed**
16 **Exemption Framework**”)

17 4. The City believes the Proposed Exemption Framework achieves a reasonable
18 balance as a near-term solution under the existing *Utilities Commission Act* (“**UCA**”)
19 that will allow EV charging service to grow while a more comprehensive regulatory
20 framework is considered, possibly involving provincial policy and legislative change.

21 5. The Proposed Exemption Framework should include an exemption from section
22 71 of Part 5 of the UCA – the requirement to file “energy supply contracts”. The
23 exemption from section 71 should include EV charging service providers who are
24 excluded from the definition of public utilities – for example, municipalities or persons
25 offering the EV service to employees or tenants.

¹ Outlined on pages 7 and 8 of the Reasons for Decision supporting Order G-119-18

1 6. Since many elements of the emerging EV charging market are in flux, the
2 Commission should revisit the Proposed Exemption Framework within five years to
3 assess its performance, including the following aspects.

- 4 a) the efficacy of the regulatory approach,
- 5 b) the competitive state of different segments of the EV charging market and
6 the need for regulation,
- 7 c) the rate of EV adoption in different parts of the province, and
- 8 d) whether any adjustments to the regulatory approach are necessary to adapt
9 to the circumstances of the EV charging market.

10 7. The City outlined its interests in the City's original submission ("**COV**
11 **Submission**").² The main themes relevant to the issues dealt with in this argument are
12 as follows:

- 13 a) The City supports the development of the EV market and the charging
14 infrastructure to support EVs. To that end, the City has established its
15 own policy measures under its 2016 *Electric Vehicle Ecosystem Strategy*
16 to assist the development of the EV charging infrastructure. These
17 municipal measures complement the broader provincial policies on carbon
18 reduction and climate change action.³
- 19 b) The City supports the following key principles established by the
20 Commission in the Alternate Energy Services ("**AES**") Inquiry – and
21 reaffirmed in Order G-11-18 – to guide how the Commission should
22 approach public utility regulation.

- 23 i. Only regulate when required.

² Exhibit C5-2, dated 16 March 2018 ("**COV Submission**")

³ See pages 3-4 of the COV Submission for more detail

- 1 ii. Regulation should not impede competitive markets.⁴
- 2 c) To the extent the market conditions allow, the Commission should forbear
3 from regulating EV service providers, but remain available to resolve
4 disputes on a complaint basis where EV service providers can exert undue
5 market power because of market constraints.
- 6 d) The EV charging service market has the potential to be competitive, with a
7 variety of service providers offering competitive options to the EV market.
8 However, some segments of the market and categories of EV charger
9 users are constrained by economic and other factors at this early stage of
10 the market development.
- 11 e) In its COV Submission, the City raised concerns about multi-unit
12 residential buildings and the potential for a tenant or strata-owner to be
13 subjected to an uncompetitive situation for home-charging – i.e. little
14 influence over decisions on the availability of home-charging or the terms
15 and conditions for home-charging that might be installed by the building
16 owner. The City believes the Province should focus on the legislation
17 governing residential tenancy and strata corporations as the more effective
18 venue to resolve any EV charging disputes, rather than the UCA.
- 19 f) To support the orderly development of the EV charging infrastructure
20 market that proceeds in line with climate change targets, the federal,
21 provincial and local governments will need to undertake further policy
22 actions, including fiscal incentives, to facilitate the development of the
23 market to a viable competitive stage.

⁴ BCUC Report, *FortisBC Energy Inc. ~ Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives*, December 2012, pages 6-7.

1 **3 RESPONSE TO THE PHASE 1 ISSUES**

2 **3.1 Issue 1: Should entities not otherwise public utilities supplying electricity to**
3 **EV end users be regulated at all?**

4 8. The City supports the Proposed Exemption Framework.

5 9. The Proposed Exemption Framework would result in three classes of EV charging
6 service operators

7 a) public utilities such as BC Hydro and Fortis BC that are regulated under
8 the UCA,

9 b) “entities not otherwise public utilities”, which would include strata
10 corporations, private businesses, and others who operate EV charging
11 services for compensation (and to which the Proposed Exemption
12 Framework would apply), and

13 c) operators that are excluded from the definition of “public utility” in the
14 UCA, which includes municipalities, regional districts, and landlords and
15 employers.

16 *Continue the current exclusions from public utility*

17 10. The City supports the continuation of the current exclusions in the definition of
18 “public utility”. These exclusions apply not only to the EV charging service operators
19 identified in paragraph 9(c) above, but also to other forms of public utilities that fall
20 within the exclusions.

21 11. Although we do not suggest any change to the current wording for the exclusions,
22 the City does suggest the Commission review the BC Hydro Electric Tariff, at the
23 appropriate time, to remove any impediments to EV charging services being installed in
24 multi-unit residential buildings. Currently, the BC Hydro tariff prohibits resale by a
25 landlord to the tenant at a marked-up rate. The City understands BC Hydro is reviewing
26 its Electric Tariff to assess whether EV charging service requires new terms and

1 conditions for service to avoid restrictions of marking up the resale of electricity.
 2 Landlords should be allowed to charge a reasonable mark-up to recover their investment
 3 in EV charging infrastructure and their operating costs.

4 12. The balance of our comments focus on the “entities not otherwise public utilities”
 5 (9(b) above).

6 *Include an exemption from section 71*

7 13. The Proposed Exemption Framework should include an exemption from section
 8 71 of Part 5 of the UCA – the requirement to file “energy supply contracts”. The
 9 requirement to file energy supply contracts was not designed for EV charging services,
 10 and would be an unnecessary regulatory burden for an EV operator that the Commission
 11 has decided to exempt.

12 14. The exemption from section 71 should include EV charging service providers
 13 who are excluded from the definition of public utilities – for example, municipalities or
 14 persons offering the EV service to employees or tenants.

15 15. Section 71 of the UCA requires

16 a person who...enters into an energy supply contract must

17 (a) file a copy of the contract with the commission under
 18 rules and within the time it specifies, and

19 (b) provide to the commission any information it
 20 considers necessary to determine whether the contract is
 21 in the public interest.

22 16. Section 68 of the UCA defines "energy supply contract" as "a contract under
 23 which energy is sold by a seller to a public utility or another buyer, and includes an
 24 amendment of that contract..." A "seller" is defined as "a person who sells or trades in
 25 energy".

1 17. Without an exemption, the sale of electricity from an EV charger would fall
2 within the definition of energy supply contract and would trigger the section 71 filing
3 requirements. That outcome would undermine the purpose of the Proposed Exemption
4 Framework. Therefore, the City submits that the Proposed Exemption Framework
5 should include an exemption from section 71 of Part 5 of the UCA.

6 *Minimize the record-keeping*

7 18. The City supports the Commission's proposal to exclude section 49 of the UCA
8 from the Proposed Exemption Framework but recommends that any record-keeping or
9 reporting requirements be limited to assisting the Commission to achieve a specific goal
10 or objective.

11 *Encouraging EV charging at multi-unit buildings*

12 19. Implementing the Proposed Exemption Framework should encourage more strata
13 corporations to provide EV charging services. An increasing number of EVs combined
14 with EV-readiness policy requirements of local governments such as those in Vancouver
15 and Richmond will also result in more EV charging services being offered by this group
16 of operators.

17 20. To support this growing market in multi-unit residential buildings and commercial
18 buildings, particularly because EV owners who use these home and workplace services
19 do not have practical alternatives, the Province or the Commission should provide
20 guidance on the types of costs (e.g. cost of capital, electricity cost, EV network
21 subscription fees, etc.) and rates that stratas, landlords and employers may charge. For
22 example, the Province offers guidelines for private water utilities that explain typical
23 cost structures.⁵

24 21. Although the Commission can offer guidance on appropriate cost structures for
25 EV charging services generally, the City believes the legislation governing residential

⁵ See https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/water-rights/water-utilities/application_guide_certificate_of_public_convenience.pdf

1 tenancy and strata corporations would be the more effective venue to resolve any
 2 tenant/landlord or strata owner/strata corporation disputes about EV charging in a multi-
 3 unit building.

4 22. Given the lack of practical alternatives available to EV owners who use the EV
 5 charging services provided by their strata, landlord or employer, the Province should
 6 also establish a mechanism to track complaints or disputes that may arise.

7 **3.2 Issue 2: Do the words “for compensation” in the definition of public utility**
 8 **mean that a person who does not expressly require customers to pay for**
 9 **charging services but instead recovers the cost of charging from other services**
 10 **provided to the customers is a “public utility”?**

11 23. The UCA defines public utility as follows:

12 **"public utility"** means a person, or the person's lessee, trustee, receiver or
 13 liquidator, who owns or operates in British Columbia, equipment or
 14 facilities for

15 (a) the production, generation, storage, transmission, sale, delivery
 16 or provision of electricity, natural gas, steam or any other agent for
 17 the production of light, heat, cold or power to or for the public or a
 18 corporation for compensation, or ...

19 but does not include

20 (c) a municipality or regional district in respect of services
 21 provided by the municipality or regional district within its
 22 own boundaries, ...

23 24. The UCA defines compensation as follows:

24 **"compensation"** means a rate, remuneration, gain or reward of any kind
 25 paid, payable, promised, demanded, received or expected, directly or
 26 indirectly, and includes a promise or undertaking by a public utility to

1 provide service as consideration for, or as part of, a proposal or contract to
2 dispose of land or any interest in it;

3 25. The element of “compensation” is essential to determining whether an operator of
4 EV charging services is a “public utility” under the UCA.

5 26. To the extent that compensation remains an issue after the Proposed Exemption
6 Framework is enacted, the City suggests the Commission should interpret
7 “compensation” narrowly to only include fees that a user is charged for the charging
8 service.

9 27. Indirect compensation becomes difficult to define and to enforce. Moreover, no
10 clear public interest is served by attempting to impute an indirect payment for the
11 charging service when there is no apparent fee for the charging service.

12 **3.3 Issue 3: Inasmuch as public utilities such as BC Hydro and FBC are to**
13 **participate in the EV market as owners or operators of EV charging stations,**
14 **clarity is needed on whether BC Hydro and FBC are permitted to invest in EV**
15 **charging stations as a prescribed undertaking under section 18 of the *Clean***
16 ***Energy Act* and section 4 of the GRR.**

17 28. Section 18 of the *Clean Energy Act* defines a “prescribed undertaking” and
18 establishes related guidance to the BCUC as follows:

19 **Greenhouse gas reduction**

20 **18** (1) In this section, "**prescribed undertaking**" means a project,
21 program, contract or expenditure that is in a class of projects, programs,
22 contracts or expenditures prescribed for the purpose of reducing
23 greenhouse gas emissions in British Columbia.

24 (2) In setting rates under the *Utilities Commission Act* for a public utility
25 carrying out a prescribed undertaking, the commission must set rates that
26 allow the public utility to collect sufficient revenue in each fiscal year to

1 enable it to recover its costs incurred with respect to the prescribed
2 undertaking.

3 (3) The commission must not exercise a power under the *Utilities*
4 *Commission Act* in a way that would directly or indirectly prevent a public
5 utility referred to in subsection (2) from carrying out a prescribed
6 undertaking.

7 (4) A public utility referred to in subsection (2) must submit to the
8 minister, on the minister's request, a report respecting the prescribed
9 undertaking.

10 (5) A report to be submitted under subsection (4) must include the
11 information the minister specifies and be submitted in the form and by the
12 time the minister specifies.

13 29. BC Hydro and Fortis BC should be allowed to invest in EV charging
14 infrastructure as a prescribed undertaking under section 18 of the *Clean Energy Act* and
15 section 4 of the *Greenhouse Gas Reduction Regulation* (“**GRR**”).

16 30. Section 4 of the GRR is not currently suited to EV charging services.

17 a) The requirement for “cost-effectiveness” in Section 4 of the GRR would
18 likely disqualify the deployment of DC Fast Charging in most locations at
19 this early stage of the market, especially in areas with the least competitive
20 choices such as remote, rural and low-income communities. This outcome
21 would work against the public interest for early investment in EV charging
22 services in less economic areas.

23 b) Section 4 should be amended to enable greater investment in EV charging
24 services. Doing so would enable BC Hydro and FortisBC to continue
25 investing in EV charging services throughout the Province without
26 reliance on provincial and/or federal grants.

- 1 31. If the Province amends section 4 of the GRR, the City suggests the following:
- 2 a) consult key stakeholders on any proposed amendments,
- 3 b) create an initial prescribed undertaking in the near term (e.g. by the end of
4 2018) that allows FortisBC and BC Hydro to invest up to a specified cost
5 threshold in EV infrastructure that meets specified expectations for the
6 reliability of EV charging service and redundancy at individual charging
7 locations,
- 8 c) when the Province establishes service density goals for the EV charging
9 network, amend the prescribed undertaking to refer to service density
10 thresholds rather than cost thresholds, so BC Hydro and FortisBC are
11 required to invest in the EV charging network until those goals are met.
12 The service density goals could be specific to rural, suburban, and urban
13 communities, key transportation corridors, low income neighborhoods,
14 disadvantaged communities, or other contexts that would benefit from an
15 equity perspective and/or may not be otherwise competitive, and
- 16 d) when the investment thresholds are shifted to service density goals, update
17 the prescribed undertaking to require BC Hydro and FortisBC to upgrade
18 their infrastructure that is upstream of revenue meters in a timely manner
19 if other operators of EV charging services require such upgrades to be able
20 to help meet the Province's service density goals.

21 4 OTHER CONSIDERATIONS

- 22 32. The Province should create 'Right-to-Charge' rules for residential charging under
23 the *Strata Property Act* and the *Residential Tenancy Act*, as described in the City's
24 earlier submissions during this inquiry. This change will benefit EV drivers or potential
25 EV drivers in multi-family buildings, and will complement the policy guidance on rates
26 and terms of service, so stratas do not create *de facto* prohibitions on EV charging
27 through high user fees.

1 **5 CONCLUSION**

2 33. The regulatory framework that BCUC establishes should align with and support
3 the provincial policy commitments related to carbon emission reduction, including:

4 a) The 2030, 2040, and 2050 climate change targets established in the
5 *Greenhouse Gas Reduction Targets Act* and the *Clean Energy Act*,

6 b) British Columbia’s “energy objectives” under the *Clean Energy Act*,
7 including the following listed under section 2 of that Act

8 (d) to use and foster the development in British Columbia of
9 innovative technologies that support energy conservation and
10 efficiency and the use of clean or renewable resources;

11 ...

12 (h) to encourage the switching from one kind of energy source
13 or use to another that decreases greenhouse gas emissions in
14 British Columbia;

15 (i) to encourage communities to reduce greenhouse gas
16 emissions and use energy efficiently; ...

17 c) British Columbia’s commitment as a member of the Zero-Emission
18 Vehicle Alliance to: “strive to make all passenger vehicle sales in our
19 jurisdictions ZEVs as fast as possible, and no later than 2050”⁶,

20 d) British Columbia’s commitment under the *Pacific Coast Action Plan on*
21 *Climate and Energy* on October 28, 2013 to:

22 Take actions to expand the use of zero-emission vehicles, aiming
23 for 10 percent of new vehicle purchases in public and private fleets
24 by 2016.

⁶ [http://climateinitiativesplatform.org/index.php/International_Zero-Emission_Vehicle_Alliance_\(ZEV_Alliance\)](http://climateinitiativesplatform.org/index.php/International_Zero-Emission_Vehicle_Alliance_(ZEV_Alliance))

- 1 e) British Columbia's other measures designed to accelerate the adoption of
2 EVs including
- 3 i. the carbon tax,
 - 4 ii. the low carbon fuel standard,
 - 5 iii. the Clean Energy Vehicle for British Columbia incentive
6 programs, and
 - 7 iv. investments in public charging infrastructure throughout
8 the province.

9 34. As noted above, the City believes the Proposed Exemption Framework achieves
10 a reasonable balance as a near-term solution under the existing UCA that will allow EV
11 charging service to grow while a more comprehensive regulatory framework is
12 considered, possibly involving provincial policy and legislative change.

13 35. The longer-term regulatory solution will require policy actions at the federal,
14 provincial and municipal levels to support the advancement of the EV charging market.

15

16 All of which is respectfully submitted by the City of Vancouver.

17

18