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August 1, 2018

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: British Columbia Utilities Commission (Commission) Inquiry into the Regulation of Electric vehicle (EV) Charging Service (the Inquiry)

Project No. 1598941

FortisBC Inc. (FBC) Final Argument

In accordance with Commission Order G-19-18 establishing a Regulatory Timetable for the above noted Inquiry, and amended by Commission Order G-119-18 dated July 4, 2018 (Exhibit A-35), attached please find FBC's Final Argument in the above noted proceeding.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC INC.

Original signed:

Diane Roy

Attachments

cc (email only): Registered Parties

Before the British Columbia Utilities Commission

An Inquiry into the Regulation of
Electric Vehicle Charging Service

Phase One Final Submission of FortisBC Inc.

August 1, 2018

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A. INTRODUCTION

1. This submission addresses the issues set out in Commission Order G-119-18 (the Phase One Scope Order) dated July 4, 2018, namely:

    a. the regulation of public utilities and entities not otherwise public utilities under a "straw man" regulatory framework for electric vehicle (EV) charging services;

    b. legal interpretation regarding the "for compensation" wording within the definition of a public utility under the *Utilities Commission Act* (the UCA); and

    c. interpretation of section 18 of the *Clean Energy Act* (the CEA) and section 4 of the *Greenhouse Gas (Clean Energy) Reduction Regulation* (the GGRR) as a prescribed undertaking, thereby enabling existing public utilities such as BC Hydro and FortisBC Inc. (FBC) to provide EV charging services with the inclusion of EV charging stations in their regulated rate base.

B. REGULATION UNDER THE "STRAW MAN" REGULATORY FRAMEWORK

2. In the Phase One Scope Order, the Commission invited submissions 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,[1] 44 and 49. Entities that are otherwise public utilities may apply for BCUC approval to provide regulated EV charging services.

3. FBC's position[2] with respect to a regulatory framework was addressed in its IR responses:

    - FBC believes that charging stations that are providing Level 2 or Level 1 service and that are owned by parties not otherwise public utilities should either be provided some form

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

[2] EV charging service is more germane to FBC as an electric utility than FortisBC Energy Inc. For that reason, active intervention in the Inquiry therefore has been by FBC.

of exemption from relevant sections of the UCA, or alternatively be subject to a very light-handed form of regulation, such as complaints-based regulation.[3]

- For Level 3 Direct Current Fast Charging (DCFC) stations and any future higher capacity EV charging stations, FBC believes that more regulatory oversight is appropriate, with differences however between utility-owned stations, and those owned by non-regulated parties:

    - For utility-owned stations, FBC expects to apply for postage stamp rates for all stations in the same category (for example, Level 3 DCFC). FBC believes a streamlined approach for rate setting is appropriate where, once a charging service rate is approved for a particular segment of its EV charging stations, and as long as the aggregate projected revenues and costs from all stations in the category do not result in a revenue deficiency over a pre-determined amount or time period, no further review or rate approval is required.[4]

    - For non-regulated parties providing DCFC service, FBC suggested that the Commission does not need to set rates for EV stations in this category and the station owners should have discretion to determine their own pricing.[5]

4. The "straw man" regulatory framework in the Phase One Scope Order is consistent with these positions.

5. With respect to the exceptions from the general exemption from Part 3 of the UCA for entities not otherwise public utilities, FBC submits that practical considerations from those entities should inform the determination of whether many of the exceptions are appropriate.[6] However, the proposed exceptions for sections 25 (Commission may order improved service), 38 (Public utility must provide service) and 42 (Duty to obey orders) from a general exemption from Part 3 of the UCA should be included in the framework for the protection of the public.

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[3] Exhibit C12-3, BCUC-FBC IR 1.5.2. FBC does not expect to own public Level 1 charging but utility-owned Level 2 stations could be regulated on an aggregate basis. The rate-setting process, reporting requirements on issues such as station costs, revenues and usage could be dealt with in an aggregated fashion, with any utility-owned Level 2 charger rates set on a postage stamp basis.

[4] Exhibit C12-3, BCUC-FBC IR 1.5.2.

[5] Exhibit C12-3, BCUC-FBC IR 1.5.2.

[6] Exhibit C12-3, BCUC-FBC IR 1.4.2.

6. FBC also suggests that section 24 (Commission must make examinations and inquiries) should also apply notwithstanding a general exemption from Part 3 of the UCA for the same reason.

7. FBC does not object to the portion of the "straw man" framework that provides that "Entities that are otherwise public utilities may apply for BCUC approval to provide regulated EV charging services".

8. FBC has already submitted an application to the Commission for Approval of Rate Design and Rates for EV DCFC Service and agrees that a form of oversight from the Commission which includes approval from the Commission to provide regulated EV charging services is appropriate.

9. Though this can be addressed at a later date, for regulated utilities, FBC believes it is appropriate to set utility specific pooled rates for EV service on a capital program basis for a period of time (for example, five years). At the end of this period, the utility would re-apply for a new pooled rate in conjunction with an overall review of the evolution of the EV charging station market. This will contribute to making the EV program dynamic and responsive to changes in the marketplace.[7]

C. MEANING OF "FOR COMPENSATION"

10. FBC does not plan on providing electricity to EV charging customers without a rate being charged. However, the meaning of "for compensation" within the definition of a public utility as defined in the UCA appears to be consistent with a requirement that there be some form of *quid pro quo*, and that something more than goodwill as a result of the operation of a free service would be required.[8] For example, EV charging service that is provided for free by a business, with the intention of attracting customers to the business, would not be "for compensation" under the UCA.

11. With respect to the specific examples provided in the Phase One Scope Order,[9] FBC does not believe that in any of the three situations, electricity is being provided "for compensation". In the example of a mall providing free EV charging service,[10] presumably the mall would be

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7 Exhibit C12-3, BCUC-FBC IR 1.19.2.

8 *Greyhound Canada Transportation Corp. v. Trentway-Wagar Inc.* (1997), 35 O.R. (3d) 145, O.J. No. 6397 (QL) (Gen. Div.).

9 Exhibit A-35, Order G-119-18, Appendix A, p. 5.

10 Exhibit A-35, Order G-119-18, Appendix A, p. 5 and Transcript Vol. 9, p.668, line 22 – p.669, line 3.

providing the EV charging service as a means of attracting customers but the costs of providing the EV charging service would be absorbed in the mall's overall cost of doing business. If the customer using the EV charging service was not under any different obligation than any other mall customers to make purchases or use services provided by the mall, then there is no *quid pro quo* for using the EV charging service. The same would be true of the other two examples cited in the Phase One Scope Order: free charging with standard pay parking at YVR[11] and charging electronic devices for free in a café.

12. In the AES Inquiry the Commission held "that a strict, literal interpretation of the definition of 'public utility' in the *UCA* could lead to an absurd result such that a host of services and technologies that are available in a competitive marketplace would require regulation."[12] The Commission also held that it "must do its best to interpret the legislation and does so following the legal test set out in *Rizzo* i.e., that the grammatical and ordinary sense of the words must be read 'harmoniously' with the purpose of the Act" which is "to regulate natural monopolies and protect consumers from the exercise of economic power." The Commission held that "a reasonable interpretation should consider the market context within which the proposed service or facility will exist, the degree to which natural monopoly characteristics are present and whether the consumer requires protection."

13. FBC believes that a reasonable basis to determine whether public EV charging service is "for compensation" would be to assess whether EV charging service users are subject to higher charges or additional obligations than other similarly situated parties that do not make use of EV charging service.

D. PRESCRIBED UNDERTAKINGS UNDER THE CEA AND GGRR

14. FBC submits that, given the state of the emerging EV market, EV charging stations are prescribed undertakings under section 4 of the GGRR, enabling existing public utilities, such as BC Hydro and FBC, to provide EV charging services with the inclusion of EV charging stations in their

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[11] YVR's General Information Parking webpage states "YVR provides free electric vehicle charging at our parking facilities." Parties using the EV charging service at a YVR parking lot pay the same rates as other users of the same parking lot or service.

[12] *In the Matter of FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives* Report, December 27, 2012, BCUC Order G-201-12, p. 15.

regulated rate base. EV charging service (unless otherwise exempted from the UCA) is clearly a public utility activity if electricity is being provided for compensation.

15. Section 18 of the CEA provides that in setting rates under the UCA for a public utility carrying out a prescribed undertaking, the Commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

16. In March 2017, amendments to the GGRR by Order in Council 101-2017 established a number of prescribed undertakings pertaining to electrification in various sectors of the provincial economy, including the transportation sector.

17. Section 4 of the GGRR (the electrification section) establishes a number of measures to promote the use of electricity for the purposes of reducing greenhouse gas (GHG) emissions. Projects or programs respecting technology that may enable a utility's customers to use electricity instead of other sources of energy that produce more GHG emissions are considered to be a prescribed undertaking for the purposes of section 18 of the CEA. Specifically, section 4(3) of the GGRR establishes several prescribed undertakings in subsections (a) through (e). Subsections (c) and (e) as follows, are those most pertinent to EV charging service:

> (c) a project, program, contract or expenditure for research and development of technology, or for conducting a pilot project respecting technology, that may enable the public utility's customers to use electricity instead of other sources of energy that produce more greenhouse gas emissions;
>
> …
>
> (e) a project for the construction, acquisition or extension of a plant or system that the public utility reasonably expects is necessary to meet the public utility's incremental load-serving obligations arising as a result of an undertaking defined in paragraph (a), (b), (c) or (d), if the public utility reasonably expects any one such project to cost no more than $20 million.

18. The development of EV charging infrastructure contributes toward the achievement of the provincial energy and climate action objectives. Deployment of EV charging stations promotes the use of EVs in BC and supports the use of clean or renewable resources, reduces BC GHG emissions, encourages individuals to switch to lower GHG emission fuel sources, encourages

communities to reduce GHG emissions and use energy efficiently, and encourages economic development and the creation and retention of jobs.

19. The development of EV charging infrastructure stations is consistent with the intent of these prescribed undertakings, particularly considering that these stations will enable customers to use electricity for transportation rather than more carbon-intensive fuel sources. These considerations with respect to Section 4(3) of the GGRR and the strong alignment with government policy[13] confirm the merits of utilities providing EV charging service and stimulating market demand in the province.

20. FBC submits that the DCFC charging stations that it has deployed to date under the EV DCFC Stations Project are consistent with the definition of a prescribed undertaking under the GGRR as set out above. The EV DCFC stations, in effect, represent FBC's first foray into owning and operating fast charging stations for EVs.[14]

21. FBC believes utilities have an important role in the electrification of the transportation sector as a fuel supplier. There are a number of potential benefits resulting from utilities providing regulated EV charging services, which include:[15]

    a. the adoption of practices to support reliable EV charging service, particularly in those areas where there are very limited choices available to EV customers;

    b. planning for the adequacy of the local distribution system and upgrades to infrastructure in advance of deployment of the station(s);

    c. long-term pricing stability and reliability, as utilities will not be entering and exiting the market according to the current market opportunities; and

    d. costs associated with various locations can be blended so that the higher cost to serve locations are mitigated by the lower cost to serve locations.

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[13] Described further in Exhibit C12-2.
[14] Exhibit C12-2, Appendix 3, p. 3.
[15] Exhibit C12-2, p. 15.

22. FBC acknowledges that the position of the Ministry of Energy, Mines and Petroleum Resources (MEMPR) is that an amendment to the regulations may be required to facilitate investment in DCFC EV charging infrastructure.[16]

23. Although FBC believes, as described above, that the existing wording of section 4 of the GGRR accommodates EV charging stations as prescribed undertakings for public utilities, FBC believes that additional clarity on the provincial government's intentions in this area could be achieved through GGRR amendments specific to EV charging.

24. FBC submits that a recommendation from the Commission that the GGRR be amended to specifically allow for the deployment of EV charging stations and related infrastructure by public utilities as prescribed undertakings would facilitate further investment in and development of EV charging infrastructure to accelerate the achievement of climate action and other government policy goals. This would be consistent with the MEMPR's position that:[17]

> A regulatory model that does not allow involvement by existing public utilities in the EV charging station market is unsuitable for BC. At this current stage of EV market development, MEMPR prefers a model that allows existing public utilities to kick-start the market by investing in EV infrastructure and recovering costs from all ratepayers, rather than as a non-regulated venture.

E. CONCLUSION

25. FBC is in general agreement with the "straw man" regulatory framework provided in the Phase One Scope Order. FBC submits that some exceptions from an exemption from Part 3 of the UCA for entities not otherwise public utilities are appropriate for the protection of the public. FBC has already submitted an application to the Commission for Approval of Rate Design and Rates for EV DCFC Service, consistent with the proposed regulatory treatment of conventional public utilities.

26. With respect to the meaning of "for compensation" as provided in the UCA, FBC submits that this implies a tangible and pecuniary element, such as payment or profit, as opposed to something of an intangible nature such as goodwill. A reasonable basis to determine whether public EV charging service is "for compensation" would be to assess whether EV charging service

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[16] Exhibit C19-5, BCUC-MEMPR IR 1.4.3; see also BCUC-MEMPR IR 1.5.3.
[17] Exhibit C19-5, BCUC-MEMPR IR 1.2.2; see also BCUC-MEMPR IR 1.3.1.

users are subject to higher charges or additional obligations than other similarly situated parties that do not make use of EV charging service.

27. Although FBC believes that the existing wording of the GGRR accommodates EV charging stations as prescribed undertakings for public utilities, FBC believes that additional clarity on the provincial government's intentions in this area could be achieved through amendments to the GGRR specific to EV charging. A recommendation from the Commission that the GGRR be amended to specifically allow for the deployment of EV charging stations and related infrastructure by public utilities as prescribed undertakings would facilitate further investment in and development of EV charging infrastructure to accelerate the achievement of climate action and other government policy goals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: August 1, 2018

[original signed by]

Diane Roy

BOOK OF AUTHORITIES

BOOK OF AUTHORITIES

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Re

Greyhound Canada Transportation Corp. and Trentway-Wagar Inc. [Indexed as: Greyhound Canada Transportation Corp. v. Trentway-Wagar Inc.]

35 O.R. (3d) 145

[1997] O.J. No. 6397

Ontario Court (General Division),

Garton J.

July 11, 1997

Road transport -- Passenger service -- Operation of free bus service not an operation for "compensation" or "reward" within meaning of Public Vehicles Act even if operator experiencing increase in goodwill -- Public Vehicles Act, R.S.O. 1990, c. P.54, ss. 1, 11(1).

Statutes -- Interpretation -- Meaning of "compensation" -- Meaning of "reward" -- Use of dictionary or thesaurus -- Ejusdem generis principle -- Operation of free bus service not an operation for "compensation" or "reward" even if operator experiencing increase in goodwill -- Public Vehicles Act, R.S.O. 1990, c. P.54, ss. 1, 11(1).

Under s. 11(1) of the Public Vehicles Act ("PVA"), the Ontario Highway Transport Board was authorized to hold a hearing about the operation of a transportation service conducted by means of a "public vehicle", which was defined to be a "motor vehicle operated on a highway . . . for the transportation for compensation of passengers". "Compensation" was defined by the PVA to include any "rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly". Upon the application of G Corp., the Board, by order dated January 14, 1997, held that T Inc. did not have the authority under the PVA to provide a scheduled bus service between Peterborough and Toronto and ordered it to cease the operation. The order was registered in the Ontario Court (General Division). T Inc. unsuccessfully sought judicial review of the Board's order by the Divisional Court.

After its unsuccessful application, T Inc. did not discontinue its operation between Peterborough and Toronto; rather, it continued to do so but without charge to passengers. G Inc. applied for an order that T Inc. and its president were in contempt of the order of the Board by operating this free

service, and it argued that T Inc. was receiving compensation in the form of the "reward" that it received in maintaining and/or enhancing its goodwill.

Held, the application should be dismissed.

It was not established on the evidence that T Inc. experienced an increase in goodwill, but, in any event, the definition of "compensation" in the PVA was not broad enough to include the maintenance of or an increase in a company's goodwill. No case-law has held that "compensation" or "reward" includes "goodwill". Dictionary definitions, which may be used to assist a court in statutory interpretation, indicated that "reward" is commonly intended to mean something tangible and pecuniary, such as payment or profit, as opposed to something of an intangible nature such as goodwill. Although a thesaurus provided synonyms for the word "reward" that included "benefit" and "recognition", the vast majority of the synonyms implied the payment of money or other tangible gifts or items. Further, although there is no rule against using a thesaurus in statutory interpretation, its use is limited and not determinative. Although synonyms for reward may include words such as "benefit" and "recognition", its meaning within the PVA was narrower. This conclusion was also supported by the ejusdem generis principle of statutory interpretation, which provides that the meaning of a general term may be limited by the list of specific words that precede it. In the PVA's definition of compensation, the word "reward" came after the words "rate", "remuneration" and "reimbursement," all of which had the notion of pecuniary payment or repayment, and "reward" should be similarly interpreted. Thus, even if T Inc.'s free fare policy resulted in an increase of goodwill, this did not constitute a reward and was not compensation within the meaning of the Act. It followed that it could not be said that T Inc. was operating a transportation system by means of a public vehicle. Accordingly, it was not established beyond a reasonable doubt that the respondents were in contempt of the Board's order and the application should be dismissed.

Cases referred to

National Bank of Greece (Canada) v. Katsikonouris, [1990] 2 S.C.R. 1029, 74 D.L.R. (4th) 197, [1991] I.L.R. 1-2663, 115 N.R. 42; R. v. Race (1973), 14 C.C.C. (2d) 165 (Ont. Dist. Ct.); Shaw v. McNay, [1939] O.R. 368, [1939] 3 D.L.R. 656 (S.C.)

Statutes referred to

Aeronautics Act, R.S.C. 1985, c. A-2, s. 3 "hire or reward"
Public Vehicles Act, R.S.O. 1990, c. P.54, ss. 1 "compensation", "public vehicle", 11(1)

Authorities referred to

Black's Law Dictionary, 6th ed. (St. Paul, Minnesota: West Publishing Co., 1990)
Burton, The Legal Thesaurus (New York, N.Y.: MacMillan, 1980)
Concise Oxford Dictionary, 8th ed. (Oxford: Clarendon Press, 1990) Sullivan, Driedger on the Construction of Statutes, 3rd ed. (Toronto: Butterworths, 1994)
Words and Phrases Judicially Defined in Canadian Courts and Tribunals, vol. 7 (Toronto: Carswell, 1993)

APPLICATION for an order that the respondents be found in contempt of an order of the Ontario Highway Transport Board.

Francy Kussner, for applicant.
Jeff G. Cowan, for respondent.

GARTON J.: -- The applicant Greyhound Canada Transportation Corp. ("Greyhound") has asked the court to find the respondent Trentway-Wagar Inc. ("Trentway") and Trentway's president, James J. Devlin, in contempt of an order of the Ontario Highway Transport Board ("the Board") dated January 14, 1997, and registered in the Ontario Court (General Division) on January 23, 1997. The burden is on the applicant to establish contempt beyond a reasonable doubt.

In its order, the Board reviewed the background of Greyhound's application and the submissions of counsel on behalf of Greyhound and Trentway. The Board's reasons focused on the issue of whether Trentway could "tack" or combine its various licences to provide a single through service between Peterborough and downtown Toronto. The Board concluded as follows:

> In summary, it is the Board's position that Trentway does not have the authority to provide a scheduled service between Peterborough and Toronto over highways 28, 115 and 401 and to continue to do so would be in contravention of the Public Vehicles Act and of the licences in question.
>
> Pursuant to Section 11.3 of the Public Vehicles Act, the Board hereby orders Trentway cease the operation of the transportation service that caused the contravention.

Trentway continues to run a regularly scheduled bus service between Peterborough and Toronto, following the same route as described in the Board order. Its vehicles have commercial licence plates issued by the Ministry of Transportation. The bus drivers wear Trentway uniforms. Passengers line up at the platforms and the buses make regularly-scheduled stops. However, since losing its appeal from the Board's order in Divisional Court, Trentway no longer charges its passengers any fees. The service is free.

The issue in this case is whether the Board's order prohibits Trentway from providing free transportation along the route in question. Would the Board have any jurisdiction to make such an order? It is fair to say that the hearing before the Board proceeded on the understanding that Trentway charged its passengers money for transportation. That is clear from the agreed statement of fact filed with the Board.

The Board's jurisdiction to hold a hearing is derived from s. 11(1) of the recently-amended Public Vehicles Act, R.S.O. 1990, c. P.54 (the "Act"): see s. 18 of the Ontario Highway Transport Board and Public Vehicles Amendment Act, 1996 (Bill 39), S.O. 1996, c. 9. It authorizes the Board to hold a hearing into the operation of any transportation service conducted by means of a "public vehicle". Section 1 of the Act defines "public vehicle", in part, as follows:

> "public vehicle" means a motor vehicle operated on a highway by, for or on behalf of any person for the transportation for compensation of passengers, or passengers and express freight that might be carried in a passenger vehicle . . .

(Emphasis added)

"Compensation" is defined in s. 1:

> "compensation" includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly.

(Emphasis added)

Counsel for the applicant submitted that even though Trentway does not charge its passengers any fares, nevertheless it still operates a transportation service conducted by a "public vehicle". Ms. Kussner argued that the "compensation" which Trentway "receives" is the "reward" of maintaining and/or enhancing its goodwill.

On the basis of the materials before me, I am not satisfied that there has been an increase in goodwill as a result of Trentway's actions. There was no expert evidence adduced in this regard. Trentway might hope to receive such a benefit from its free ride policy, but the evidence does not satisfactorily establish that this has in fact occurred, or will occur in future. Even if Trentway's goodwill has been enhanced, it would seem that this purported benefit should be set off by the costs incurred in offering the free service. Again, no expert evidence in this respect was before the court. In any event, I am not satisfied that the definition of "compensation" in the Act is broad enough to include the maintaining of or an increase in a company's goodwill.

Counsel for the applicant relied on the definition of "reward" in Words and Phrases Judicially Defined in Canadian Courts and Tribunals, vol. 7 (Toronto: Carswell, 1993) where reference is made to "hire or reward". She then noted that "hire or reward" is defined in s. 3 of the Aeronautics Act, R.S.C. 1985, c. A-2 as follows:

> "hire or reward" means any payment, consideration, gratuity or benefit, directly or indirectly charged, demanded, received or collected by any person for the use of an aircraft;

This definition was considered in R. v. Race (1973), 14 C.C.C. (2d) 165 (Ont. Dist. Ct.), by McLennan D.C.J., who noted that it was extremely broad. However, in terms of its application, the facts in that case are distinctly different from the facts in the case before this court. The accused, who operated a hunting lodge, used aircraft to fly their customers between the main lodge and their outpost lodges. It was held that they were using the aircraft for "hire or reward", notwithstanding the absence of a specific payment for the aircraft rides. Customers were still required to pay for their stay and they would not have come to the lodge in the first place if they were not transported to the outpost camp. The accused used the airplane to obtain customers, and consequently received payment from them for their accommodation. This was clearly a "benefit" within the definition of "hire and reward". The court in Race accepted the Crown's argument that embodied in the all-inclusive rate charged by the accused was an amount for the use of the aircraft.

In the present case, there is no payment of any kind by Trentway's passengers. Trentway does not receive or demand any benefit or payment, either directly or indirectly from an individual who chooses to ride one of its buses between Peterborough and Toronto.

No case law was provided to the court which held that the interpretation of either "compensation" or "reward" encompassed the notion of "goodwill". In support of her argument that "reward" does include goodwill, counsel for the applicant relied on William C. Burton's The Legal Thesaurus (New York, N.Y.: MacMillan, 1980), where a number of synonyms, including "benefit" and "recognition" are included under the word "reward". The entire list reads as follows:

REWARD, noun

> acknowledgment, award, benefit, bonus, booty, bounty, compensation, consideration, donation, emolument, fee, gift, grant, gratuity, guerdon, honorarium, incentive, indemnification, need, pay, payment, perquisite, praemium proponere, premium, presentation, prize, purse, quittance, recognition, recompense, remembrance, remuneration, requital, requitement, return, solatium, tip, tribute

It is to be noted that the vast majority of the above synonyms imply the payment of money or other tangible gifts or items. This, it would seem, is the most common meaning or usage of the word "reward". Although "recognition" is also included, it must be remembered that a thesaurus, unlike a dictionary, does not provide definitions, but rather alternatives or synonyms. There is no rule against using a thesaurus per se in interpreting a statutory provision, and it may, in fact, provide some helpful guidance. However, its use is limited and is certainly not determinative.

On the other hand, the use of dictionaries and jurisprudence to assist in statutory interpretation is well recognized and sanctioned. The following passages are from R. Sullivan, Driedger on the Construction of Statutes, 3rd ed. (Toronto: Butterworths Canada Ltd., 1994) at pp. 8-9, 12 and 26, where the author discusses the usefulness of dictionaries in applying the basic principle of statutory construction, that is, the "ordinary meaning" rule:

> The "ordinary meaning" of a text is the meaning that is understood by a competent user of language upon reading the words in their immediate context [footnote omitted]. The immediate context of words in a statute generally consists of the section or subsection in which the words appear. In some cases it might include more -- a series of related provisions perhaps. However, it does not include the statute as a whole, but only as much as is needed for the reader to form a sensible impression of what is being said.
>
> As defined here, the ordinary meaning is not the post-interpretative meaning, the meaning that is accepted after adjusting for all relevant considerations. It is the first impression meaning gleaned by a competent reader based on the information that is immediately to hand. This understanding reflects the actual experience of readers, who normally do not read the whole of a text before forming an impression of the meaning of the individual sentences that comprise it.
>
> . . . . .
>
> The chief virtue of a dictionary definition is that it fixes the outer limits of ordinary meaning. It offers a more or less complete characterization of the conventional ways in which a word or expression is used by literate and informed persons within a linguistic community. It thus indicates the possible range of meanings that the word or expression

> is capable of bearing. This is valuable information because, generally speaking, the courts prefer meanings that are plausible, that is, meanings that the words are reasonably capable of bearing.
>
> . . . . .
>
> Dictionaries are normally consulted to determine the meaning of words used in legislation. However, courts sometimes look up the definition of things forming parts of the facts to which the legislation is applied.
>
> . . . . .
>
> It is presumed that the ordinary meaning of legislation is the most appropriate or "intended" meaning. In the absence of a reason to reject it, this meaning is binding on the courts.

The Concise Oxford Dictionary, 8th ed. (1990), defines "reward" as follows:

> 1 a a return or recompense for service or merit. b requital for good or evil; retribution. 2 a sum offered for the detection of a criminal, the restoration of lost property, etc.
>
> "Return" is defined in the same dictionary as follows:
>
> verb- . . . 3 pay back or reciprocate; give in response (decided not to return the compliment). 4 yield (a profit).
>
> noun- . . . 4 a the proceeds or profit of an undertaking. b the acquisition of these.
>
> "Recompense" is defined as a reward or requital.

It is clear from the above definitions that "reward" is commonly intended to mean something tangible and pecuniary, such as payment or profit, as opposed to something of an intangible nature such as goodwill. Black's Law Dictionary, 6th ed. (1990), includes the following definitions of goodwill:

> The favour which the management of a business wins from the public. The favourable consideration shown by the purchasing public to goods or services known to emanate from a particular source. . . . Property of an intangible nature, commonly defined as the expectation of continued public patronage.

I conclude that although synonyms for reward may include words such as "benefit" and "recognition", its meaning within the Public Vehicles Act is narrower and is limited to its "ordinary meaning".

Another principle of statutory interpretation, ejusdem generis, also leads me to this conclusion. This principle was explained by the Supreme Court of Canada in National Bank of Greece (Canada) v. Katsikonouris, [1990] 2 S.C.R. 1029 at p. 1040, 74 D.L.R. (4th) 197 at p. 203 by La Forest J.:

> Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it.

The specific words preceding the general word "reward" in the definition of "compensation" are "rate", "remuneration", and "reimbursement". The Concise Oxford Dictionary defines these words as follows:

> rate -- 2 a fixed or appropriate charge or cost or value; a measure of this
>
> remuneration -- 1 reward; pay for services rendered. 2 serve as or provide recompense for (toil etc.) or to (a person).
>
> reimburse[ment] -- 1 repay (a person who has expended money) 2 repay (a person's expenses)

The common feature connecting the above words is the notion of pecuniary payment or repayment. It follows that the word "reward", which comes after these more specific words, should also be construed as containing a tangible pecuniary element. Its meaning should be limited to the "genus of the narrow enumeration that precedes it", and not extended to include the notion of a company's goodwill.

The meaning of the word "compensation" was considered in Shaw v. McNay, [1939] O.R. 368, [1939] 3 D.L.R. 656 (S.C.). The question before the court was whether the defendant, at the time of a motor vehicle accident, was operating a vehicle "in the business of carrying passengers for compensation", pursuant to s. 47(2) of the Highway Traffic Act, R.S.O. 1937, c. 288. That Act, unlike the Public Vehicles Act, did not define "compensation". Nevertheless, Mr. Justice Godfrey's analysis of the meaning of the word is instructive. At pp. 370-71 O.R., pp. 658-59 D.L.R., His Lordship states:

> What is the natural meaning of the words "compensation" and "business"? Funk & Wagnalls defines "compensate", "To make suitable return to or for, as for services, loss, etc. -- To give an equivalent or recompense to or for; requite, remunerate as to compensate one for his services."
>
> The word "compensation" is used in other sections of the Act, and its meaning in those sections throws some light as to its meaning in this section.
>
> . . . . .
>
> Subsection (m):
>
> "'Public vehicle' shall mean any motor vehicle operated on a highway by, for or on behalf of any person who receives compensation either directly or indirectly for the transportation of passengers, or passengers and express freight which might be carried in a passenger vehicle."

The above definition is very similar to the current definition of "public vehicle" in the Public Vehicles Act.

Godfrey J. concluded that "compensation" means payment by way of profit or gain. At p. 371 O.R., p. 659 D.L.R., he stated:

> It seems clear that when the words [referring to the words "business" and "compensation"] were used together the legislature intended to impose liability only on persons who were operating motor vehicles for the carrying of passengers in a commercial way for gain and profit. This would include taxi drivers and those who operate motor buses on which passengers pay fares.

He concluded that payment or the promise of payment by the plaintiffs to the defendant for half the cost of gasoline used on a trip was not "compensation" because it did not constitute payment by way of profit or gain. Nor, in my view, can an increase in a company's goodwill be considered as payment for profit or gain, or "compensation" as that word is defined in the Act.

I conclude that even if Trentway's free fare policy has resulted in the maintaining of and/or increase in its goodwill, this does not constitute a "reward", and hence is not "compensation" within the meaning of s. 1 of the Act. It can therefore not be said that Trentway operates a transportation service by means of a "public vehicle". In my view, the Legislature did not intend to regulate a free transportation service.

There is evidence before the court that, on occasion, Trentway inadvertently charged for the carriage of freight. These incidents arose when agents, who are not employees of Trentway, charged compensation for parcels between Peterborough and Toronto. Upon learning of this situation, Trentway immediately contacted the agents involved, advised them that no money was to be charged, and instructed them to make the appropriate refunds. In any event, it seems that the Board does not have jurisdiction to regulate the carriage of parcels by commercial vehicles unless passengers are also charged compensation. I refer again to the Act's definition of "public vehicle" -- ". . . a motor vehicle operated on a highway by, for or on behalf of any person for the transportation for compensation of passengers, or passengers and express freight that might be carried in a passenger vehicle . . ." (emphasis added).

In conclusion, I am not satisfied beyond a reasonable doubt that Trentway, by offering free transportation to passengers, is in contempt of the Board's order. The motion is therefore dismissed.

If counsel cannot agree on the matter of costs, I am prepared to deal with this issue upon receipt of written submissions within 30 days of the release of this endorsement.

Application dismissed.