

# **BRITISH COLUMBIA UTILITIES COMMISSION**

## **Inquiry into the Regulation of Electric Vehicle Charging Service BCUC Project No. 1598941**

### **Phase One Final Argument by BC Sustainable Energy Association and Sierra Club BC**

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## 1.0 Introduction

This is the final argument of the interveners BC Sustainable Energy Association and Sierra Club BC (BCSEA-SCBC) in Phase One of the Commission's Inquiry into the Regulation of Electric Vehicle Charging Service, pursuant to Order G-119-18.<sup>1</sup> The Inquiry was established by Order G-10-18.<sup>2</sup>

### 1.1 BCSEA and SCBC Involvement in the Inquiry

BCSEA is a non-profit association of some 500 citizens, professionals and practitioners committed to sustainable energy and the transition to a low-carbon economy in B.C. SCBC is a non-profit organization with over 30,000 supporters devoted to defending B.C.'s wild places and species, within the urgent context of climate change.

BCSEA and SCBC's interests in this proceeding are as non-profit public interest environmental and energy policy organizations, and as representatives of their members' interests as ratepayers of BC Hydro or FortisBC Inc. (FBC). Many of their members already own and drive an EV or wish to own an EV or to use an EV such as an electric bus when they become more available. More broadly, BCSEA-SCBC strongly support the burgeoning adoption of electric vehicles in substitution for fossil-fuel vehicles in all B.C. transportation sectors.

BCSEA-SCBC have participated fully in the Inquiry. They:

- filed written evidence dated March 16, 2018,<sup>3</sup>
- made information requests to the Ministry of Energy, Mines and Petroleum Resources,<sup>4</sup> BC Hydro,<sup>5</sup> City of Vancouver,<sup>6</sup> Don Flintoff,<sup>7</sup> Tesla,<sup>8</sup> Vancouver Electric Vehicle Association,<sup>9</sup> ChargePoint,<sup>10</sup> and FortisBC Inc.<sup>11</sup> as of May 15, 2018,
- responded to information requests on their (BCSEA-SCBC's) evidence from the Commission,<sup>12</sup> BC Old Age Pensioners Organization, et al.,<sup>13</sup> and Commercial Energy Consumers,<sup>14</sup>
- reviewed much of the evidence and responses to information requests provided by the other parties in the inquiry, and
- made submissions at the June 27, 2018 procedural conference.

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<sup>1</sup> Exhibit A-35.

<sup>2</sup> Exhibit A-1.

<sup>3</sup> [Exhibit C6-2](#).

<sup>4</sup> Exhibit C6-3. Response at [Exhibit C19-6](#).

<sup>5</sup> Exhibit C6-4. Response at [Exhibit C1-4](#).

<sup>6</sup> Exhibit C6-5. Response at [Exhibit C5-6](#).

<sup>7</sup> Exhibit C6-6. Response at [Exhibit C4-9](#).

<sup>8</sup> Exhibit C6-7. Response at [Exhibit C28-5](#).

<sup>9</sup> Exhibit C6-8. Response at [Exhibit C30-7](#).

<sup>10</sup> Exhibit C6-9. Response at [Exhibit C25-8](#).

<sup>11</sup> Exhibit C6-10. Response at [Exhibit C12-3](#).

<sup>12</sup> [Exhibit C6-11](#).

<sup>13</sup> [Exhibit C6-12](#).

<sup>14</sup> [Exhibit C6-13](#).

## 1.2 BCSEA-SCBC's Overarching Points

BCSEA-SCBC endorse the following overarching points that they made in their March 16, 2018 evidence:

1. The Commission's approach to regulation of EV charging services should be designed to foster the rapid development of electric vehicles in all B.C. transportation sectors, including passenger, light commercial and heavy duty. Encouraging the adoption of EVs in substitution for fossil-fuel vehicles is in the public interest and consistent with the B.C. energy objectives under the *Utilities Commission Act* and the *Clean Energy Act*.
2. The Commission should adopt high-level objectives for its rules and policies (to be developed) regarding EV charging services, such as the following suggestions for discussion:
  - a. to reduce barriers to EV adoption and use,
  - b. to support growth and innovation in the market for EV services,
  - c. to maximize the benefits and minimize the costs of the use of EVs to the environment and the community,
  - d. to maximize the benefits and minimize the costs of EV charging to the electric system, and
  - e. to foster the public interest and the B.C. energy objectives.
3. Entities that are public utilities due to providing EV charging services, and are not otherwise public utilities, should generally be subject to little or no regulation by the Commission for a reasonable period of time to allow development of the sector, after which the form of regulation (if any) of the provision of these EV charging services should be revisited to take into account the evolved nature of sector.
4. EV charging services provided by entities excluded from the definition of "public utility"<sup>15</sup> in the UCA are already not regulated by the Commission, and in BCSEA-SCBC's view should remain unregulated.
5. The Commission should allow BC Hydro and FBC to provide public EV charging services, particularly DCFC services, to serve and foster the development of the EV sector in B.C. The Commission should take a flexible approach to the utilities' EVCS rates and rate design to keep the rates low enough initially to foster demand for the service. EVCS projects or programs that may be proposed by BC Hydro or FBC should be examined by the Commission on their own merits, bearing in mind, among other things, the importance of innovation and market development.<sup>16</sup>
6. The Commission should exercise its authority under section 88(3) of the UCA to exempt from some or all of the provisions of the Act certain classes of entities providing EV charging services (to be defined) that but for the exemption would be "public utilities" and regulated under the Act.<sup>17</sup> (For clarity, this includes

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<sup>15</sup> For example, municipalities, regional districts, employers to employees, and landlords to tenants.

<sup>16</sup> This point is reworded for clarity based on BCSEA-SCBC's response to BCOAPO IR 1.1, Exhibit C6-12.

<sup>17</sup> This point is reworded to say that the Commission should exercise its authority, from "should

entities providing EV charging services that may not currently meet the definition of “public utility” but that likely would do so if they started to receive compensation for their EV charging services.) An exemption under s.88(3) requires the advance approval of the Minister responsible for BC Hydro, i.e., the Minister of Energy, Mines and Petroleum Resources.

### 1.3 Issues for Phase One

After receiving submissions from parties at the June 27, 2018 procedural conference, the Panel adopted a phased approach to the inquiry. The Panel noted that “investment and policy decisions are currently at play and therefore interveners are urging the BCUC to expedite the process by prioritizing important issues in the near term.” The Panel said that “While there is a broad spectrum of issues that exist in the EV market that need to be addressed, the Panel agrees that they will continue to evolve as the EV market develops or can be dealt with in the future.”<sup>18</sup>

The Panel established a regulatory timetable for written final and reply arguments on phase one issues identified on pages 7 and 8 of the reasons for decision. The issues (numbered for convenience) are as follows:

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 EV 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. Regarding participation of public utilities such as BC Hydro and FBC as owners or operators of EV charging stations, are BC Hydro and FBC permitted to invest in EV charging stations as a prescribed undertaking under section 18 of the *Clean Energy Act* and section 4 of the GRR?
4. Arguments on the following straw man regulatory framework:
  - a. 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,<sup>19</sup> 44, and 49, similar to the exemption granted under Order G-71-16 for Bakerview EcoDairy Ltd.
  - b. Entities that are otherwise public utilities may apply for BCUC approval to provide regulated EV charging services.
5. Arguments on:
  - a. Legal interpretation of “for compensation” within the definition of a public utility under the UCA.
  - b. Interpretation of section 18 of the *Clean Energy Act* and section 4 of the GRR as a prescribed undertaking, thereby enabling existing public utilities such as BC Hydro and FBC to provide EV charging services with the inclusion of EV charging stations in their regulated rate base.

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consider...” based on a review of the evidentiary record.

<sup>18</sup> Exhibit A-35, Decision and Order G-119-18, Appendix A, p.6.

<sup>19</sup> Excluding 43(1)(b)(ii) where a public utility must provide to the BCUC an annual report regarding demand-side measures.

6. Arguments on any additional priority issues for the Panel's consideration in the first phase of the Inquiry's report.

For convenience, BCSEA-SCBC have organized their submissions on these issues under the following headings:

1. "Free EV Charging for Customers." This addresses issues 1 and 5(a).
2. Exemption from regulation for public utilities (not otherwise public utilities) providing EV charging services. This addresses issues 2 and 4(a).
3. EV charging services by BC Hydro and FBC. This addresses issues 3, 4(b) and 5(b).
4. EV charging services by actively regulated public utilities other than BC Hydro and FBC. This addresses issues 3, 4(b) and 5(b).
5. Other priority issues for phase one.

#### **1.4 Summary of BCSEA-SCBC submissions**

##### **1.4.1 "Free EV Charging for Customers"**

1. An entity (not otherwise a public utility) that provides free EV charging service for customers is not a "public utility," because there is no "sale of electricity for compensation." While "compensation" is defined broadly in the UCA, the definition is not so sweeping as to include EV charging service where the EV driver receiving the service is under no obligation to provide compensation (however broadly defined) for the service to the provider of the service.
2. Free EV Charging for Customers is no more the sale of electricity to the public for compensation than free air conditioning for customers is the sale of thermal energy to the public for compensation.
3. Statutory interpretation of the word "compensation" in the UCA requires consideration of the broad definition of compensation within the words "sale of electricity to the public for compensation" in the context of the definition of "public utility" being the foundational prerequisite for the Commission's authority to regulate under the UCA for the purpose of regulating natural monopolies and protecting consumers from the exercise of economic power.
4. If there was any doubt (which there is not) that Free EV Charging for Customers is not "the sale of electricity to the public for compensation" any doubt would be removed by reading the definitions of "public utility" and "compensation" harmoniously with the purpose of the UCA "to regulate natural monopolies and protect consumers from the exercise of economic power."<sup>20</sup> Free is not for compensation. The provision of free EV charging service for customers is not a natural monopoly. Customers who partake of free EV charging service for customers are not electricity consumers who require protection from the exercise of economic power.
5. It is respectfully submitted that the inquiry panel should confirm that an entity (not otherwise a public utility) providing free EV charging services is not a public utility under the UCA and hence is not regulated by the Commission.

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<sup>20</sup> [AES Inquiry Report](#), p.15.

6. To be clear, BCSEA-SCBC assume for this argument that an entity (not otherwise a public utility) that provides EV charging service to or for the public in B.C. for payment of money, whether directly from the EV driver or indirectly through a payment network, and whether the payment is by kWh, by charging-time or by flat rate (e.g., monthly), is a “public utility” and hence subject to some degree of regulation by the Commission. However, the form of the regulation should be minimal, as argued under the next heading.

#### **1.4.2 Exemption from regulation for public utilities (not BC Hydro or FBC or another actively regulated public utility) providing EV charging services**

7. Entities that are “public utilities” by virtue of providing EV charging services (not BC Hydro or FBC or another actively regulated public utility) should be the subject of a Commission exemption from Part 3 of the Act under s.88(1) and 88(3) with the prior approval of the Minister. These public utilities are not natural monopolies, nor do their customers require protection from the exercise of economic power.
8. This forbearance from regulation is in the public interest and furthers the B.C. energy objectives by removing barriers to the rapid development of the EV sector in substitution of the use of fossil fuels for transportation in B.C.
9. The exemption order should be subject only to the minimum requirements to allow the Commission to determine in the future whether the requirements for the exemption are met in a specific case.
10. BCSEA-SCBC recommend an exemption from Part 3 except s.42, 43 (omitting s.43(1)(i)), and 44, with no residual authority clause, directions, registration requirement or annual report requirement. This is similar to the Micro TES and Strata owned TES exemption models.
11. The Bakerview EcoDairy exemption model requires annual reporting to the Commission. This would be onerous for many would-be providers of EV charging service and would likely discourage them from providing EV charging service.
12. There should be a single “class of cases” including all entities providing EV charging services that in doing so are public utilities and that are not otherwise public utilities. For greater certainty, the class of cases should include the Tesla Supercharger Network, and EV charging services to Strata Owners in parking facilities owned by a Strata Corporation. Attempting to customize the degree of the exemption according to factors such as charging level or location would likely be ineffective and impractical.
13. BCSEA-SCBC’s recommendation for an exemption (from Part 3 except s.42, 43 (omitting s.43(1)(i)), and 44) also applies to an inactively regulated public utility, such as an IPP, or a provider of Micro TES, Strata owned TES or Stream A TES entities, that is also a public utility by virtue of providing EV charging services.

#### **1.4.3 EV charging services by BC Hydro and FBC**

14. BCSEA-SCBC submit that the Inquiry Panel should determine that BC Hydro and FBC are allowed in principle to provide, and recover the costs of providing, public EV charging service.
15. The Commission should take a flexible approach to BC Hydro’s and FBC’s EVCS rates and rate design in order to keep the rates low enough initially to foster

- demand for the service. EVCS projects or programs that may be proposed by BC Hydro or FBC should be examined by the Commission on their own merits.
16. Section 18 of the CEA and s.4 of the Greenhouse Gas Reduction Regulation provide a mechanism for a public utility such as BC Hydro or FBC to recover certain costs of prescribed undertakings aimed at reducing GHG emissions through electrification. A public utility's project or program to do with EV charging service would be an prescribed electrification undertaking if it meets the criteria set out in s.4 of the GRR. However, this would have to be determined by the Commission on the facts of a specific undertaking presented by BC Hydro or FBC.
  17. Importantly, the prescribed undertaking mechanism is not the only way for BC Hydro or FBC to recover their costs of EV charging service. The existence of the mechanism under CEA s.18 and GRR s.4 does not bar BC Hydro or FBC from recovering their costs of providing EV charging service in the usual manner that they recover their costs of service.

#### **1.4.4 EV charging services by actively regulated public utilities other than BC Hydro and FBC**

18. The provision of public EV charging services by actively regulated public utilities other than BC Hydro and FBC should be encouraged, not discouraged.
19. The regulatory treatment of EV charging services by actively regulated public utilities other than BC Hydro and FBC should be the same as the minimal regulatory treatment of EV charging services by public utilities that are not otherwise a public utility, except to the extent required by the fact that the subject public utility provides another service that is actively regulated.

#### **1.4.5 Other priority issues for phase one**

20. BCSEA-SCBC encourage the Inquiry Panel to discuss and clarify whether EV charging service by, or arranged by, a strata corporation to strata owners within a strata-owned parking facility is within the definition of public utility.

### **1.5 Terminology**

#### **1.5.1 Public utility**

In this written argument, unless otherwise specified, "public utility" means the same as public utility (without quotes). The quotes are used to emphasize the definition of "public utility" in the UCA.

Meeting the definition of "public utility" means both:

- fitting the words in paragraph (a) or (b) of the definition of public utility, and
- not falling within any of paragraphs (c) to (g) of the definition of public utility.

So, a municipality that provides EV charging service to or for the public or a corporation for compensation within the meaning of paragraph (a), and that is excluded by paragraph (c), is not a public utility. It is not properly described as a 'public utility with an exemption from regulation.'



A person is a public utility if it meets the definition of public utility, even if the person is unaware that it is a public utility or if the Commission has not made a specific determination that the person is a public utility.

The issues identified in Exhibit A-35 and addressed in this argument relate to two quite different aspects of how the term “public utility” relates to EV charging services:

- The legal meaning of “for compensation,” and the question of whether providing “Free EV Charging” makes a person a public utility, involve whether something is or is not a public utility. If it is not a public utility, then it is not regulated by the Commission, period.
- The rest of the issues arise where, and only where, EV charging service is provided by a public utility. The Commission has jurisdiction under the UCA to regulate EV charging service provided by a public utility. The Commission cannot disavow this jurisdiction. However, the Commission can determine the degree and form of the regulation, including ‘no active regulation.’

### 1.5.2 Exclusion, exemption and exception

The UCA uses the term “exempt” (and “exemption”<sup>21</sup>) to refer to decisions by the Commission, with the prior approval of the Minister, under s.88(3).<sup>22</sup> Accordingly, a decision under s.88(3) will be referred to as an exemption in this argument.

In discussions regarding an exemption (e.g., of a public utility providing EV charging services) from Part 3 of the UCA, the Commission uses the term “exception” to refer to sections that are expressly not included in the exemption (and therefore continue to apply). For example, the Micro TES exemption is an exemption from Part 3 with the exception of sections 42, 43 and 44.

In this argument, paragraphs (c) to (g) of the definition of public utility are referred to as exclusion paragraphs<sup>23</sup> to highlight the significant legal difference between a person providing EV charging services that is excluded from the definition of public utility and a person providing EV charging services (in circumstances that make it a public utility) that is exempted from certain regulatory provisions of the UCA, perhaps with certain exceptions.

### 1.5.3 Person

In this argument, “person” (e.g., providing EV charging service) means broadly any entity, including a municipality, a non-profit society, a First Nation, an individual, etc.

For reference, the UCA definition of “public utility” refers broadly to “a person, or the person's lessee, trustee, receiver or liquidator.” This is further expanded by section 29 of the *Interpretation Act*, which states that in an enactment: “‘person’ includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.”

<sup>21</sup> UCA s.125.2(9) refers to an exemption under s.88(3).

<sup>22</sup> And, exemptions by the Minister under s.22 of the UCA.

<sup>23</sup> I.e., a person in the circumstances set out in paragraph (a) or (b) of the definition would be a public utility but for being excluded under paragraph (c) to (g).

## 1.5.4 Regulation

“Regulation” of a public utility in this argument is limited to regulation by the Commission under the UCA. Public utilities, including those that provide EV charging services, are subject to various other forms of regulation administered by other regulatory bodies.

Generally, it is said that any and all public utilities are “regulated” by the Commission under the UCA, and this includes both active regulation (no exemption) and inactive regulation (an informal term where a public utility has an exemption). However, in some contexts “regulated public utility” refers to an actively (or fully) regulated public utility.

## 2.0 Statutory framework

### 2.1.1 *Utilities Commission Act*

The EV Charging Services Inquiry is established under section 82 of the *Utilities Commission Act*. Subsection 82(2) provides the Commission with the same powers in this inquiry as it has in respect of an application or a complaint. Section 82 states:

Power to inquire without application

82 (1)The commission

(a) may, on its own motion, and

(b) must, on the request of the Lieutenant Governor in Council,

inquire into, hear and determine a matter that under this Act it may inquire into, hear or determine on application or complaint.

(2) For the purpose of subsection (1), the commission has the same powers as are vested in it by this Act in respect of an application or complaint.

The definition of “public utility is set out in section 1 of the Act:

"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, or

(b) [not applicable]

but does not include

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

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the *Hydro and Power Authority Act*, in respect of anything done, owned or operated under or in relation to that agreement;

“Compensation” is defined in section 1 of the Act:

"compensation" means a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly, and includes [not applicable].

“Tenant” is defined in section 1 of the Act:

"tenant" does not include a lessee for a term of more than 5 years.

Section 88 sets out the Commission’s authority to make exemptions. Subsection 88(1) allows the Commission to define a “class of cases” for the purpose of an exemption. Subsection 88(3) allows the Commission, with the prior approval of the Minister, to exempt a class of cases, for example, from the application of certain provisions of the Act. Section 88 states:

Application of orders

88 (1) In making an order, rule or regulation, the commission may make it apply to all cases, or to a particular case or class of cases, or to a particular person.

(2) The commission may exempt a person from the operation of an order, rule or regulation made under this Act for a time the commission considers advisable.

(3) The commission may, on conditions it considers advisable, with the advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act.

(4) The commission has no power under this section to make an order respecting a person, or a person in respect of a matter, who has been exempted under section 22.

Part 3 of the UCA is titled Regulation of Public Utilities. It includes sections 21 to 64. The Commission’s exemption orders typically take the form of an exemption from Part 3 with the exception of certain sections (that remain applicable).

Sections of the UCA that have been excepted from exemption from Part 3 include the following:

UCA s.25 – Commission may order improved service by public utility

UCA s.26 – Commission may set standards

UCA s.38 – Public utility must provide service

UCA s.42 – Public utility’s duty to obey orders of the Commission

UCA s.43 -- Public utility's duty to provide information at the Commission's request<sup>24</sup>

UCA s.44 -- Public utility's duty to keep records required by the Commission

UCA s.49 – Commission may order public utility to keep and provide accounts and reports

### **2.1.2 Clean Energy Act**

Section 2 of the *Clean Energy Act* sets out British Columbia's energy objectives:

British Columbia's energy objectives

2 The following comprise British Columbia's energy objectives:

- (a) to achieve electricity self-sufficiency;
- (b) to take demand-side measures and to conserve energy, including the objective of the authority reducing its expected increase in demand for electricity by the year 2020 by at least 66%;
- (c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;
- (d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
- (e) to ensure the authority's ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the *BC Hydro Public Power Legacy and Heritage Contract Act* continue to accrue to the authority's ratepayers;
- (f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;
- (g) to reduce BC greenhouse gas emissions
  - (i) by 2012 and for each subsequent calendar year to at least 6% less than the level of those emissions in 2007,
  - (ii) by 2016 and for each subsequent calendar year to at least 18% less than the level of those emissions in 2007,
  - (iii) by 2020 and for each subsequent calendar year to at least 33% less than the level of those emissions in 2007,
  - (iv) by 2050 and for each subsequent calendar year to at least 80% less than the level of those emissions in 2007, and
  - (v) by such other amounts as determined under the *Greenhouse Gas Reduction Targets Act*;
- (h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;
- (i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently;

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<sup>24</sup> Excluding 43(1)(b)(ii) where a public utility must provide to the BCUC an annual report regarding demand-side measures.

- (j) to reduce waste by encouraging the use of waste heat, biogas and biomass;
- (k) to encourage economic development and the creation and retention of jobs;
- (l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;
- (m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia;
- (n) to be a net exporter of electricity from clean or renewable resources with the intention of benefiting all British Columbians and reducing greenhouse gas emissions in regions in which British Columbia trades electricity while protecting the interests of persons who receive or may receive service in British Columbia;
- (o) to achieve British Columbia's energy objectives without the use of nuclear power;
- (p) to ensure the commission, under the *Utilities Commission Act*, continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act.

Section 18 of the CEA states:

Greenhouse gas reduction

- 18 (1) In this section, "**prescribed undertaking**" means a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia.
- (2) In setting rates under the *Utilities Commission Act* 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.
- (3) The commission must not exercise a power under the *Utilities Commission Act* in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.
- (4) A public utility referred to in subsection (2) must submit to the minister, on the minister's request, a report respecting the prescribed undertaking.
- (5) A report to be submitted under subsection (4) must include the information the minister specifies and be submitted in the form and by the time the minister specifies.

Section 35(n) of the CEA provides that the Lieutenant Governor in Council may make regulations:

- (n) for the purposes of the definition of "prescribed undertaking" in section 18, prescribing classes of projects, programs, contracts or expenditures that encourage

- (i) the use of
  - (A) electricity, or
  - (B) energy directly from a clean or renewable resourceinstead of the use of other energy sources that produce higher greenhouse gas emissions, or
- (ii) the use of natural gas, hydrogen or electricity in vehicles, and the construction and operation of infrastructure for natural gas or hydrogen fueling or electricity charging.

### 2.1.3 Greenhouse Gas Reduction (Clean Energy) Regulation

The Greenhouse Gas Reduction (Clean Energy) Regulation<sup>25</sup> (GGRR) is adopted pursuant to sections 18 and 35 of the CEA.

Section 4 of the GGRR is a lengthy section<sup>26</sup> headed "Prescribed undertaking – electrification." Section 4 states:

Prescribed undertaking — electrification

4 (1) In this section:

"benefit", in relation to an undertaking in a class defined in subsection (3) (a) or (b), means all revenues the public utility reasonably expects to earn as a result of implementing the undertaking, less revenues that would have been earned from the supply of undertaking electricity to export markets;

"cost", in relation to an undertaking in a class defined in subsection (3) (a) or (b), means costs the public utility reasonably expects to incur to implement the undertaking, including, without limitation, development and administration costs;

"cost-effective" means that the present value of the benefits of all of the public utility's undertakings within the classes defined in subsection (3) (a) or (b) exceeds the present value of the costs of all of those undertakings when both are calculated using a discount rate equal to the public utility's weighted average cost of capital over a period that ends no later than a specified year;

"natural gas processing plant" means a facility for processing natural gas by removing from it natural gas liquids, sulphur or other substances;

"specified year", in relation to an undertaking within a class defined in subsection (3), means

- (a) a year determined by the minister with respect to an identified public utility, or
- (b) if the minister does not make a determination for the purposes of paragraph (a), 2030;

"undertaking electricity" means electricity that is provided to customers in British Columbia as a result of an undertaking and is in addition to

<sup>25</sup> B.C. Reg. 102/2012. [Link](#).

<sup>26</sup> [Link](#).

electricity that would have been provided had the undertaking not been carried out.

(2) [not applicable to EV charging services]

(3) Subject to subsection (4), a public utility's undertaking that is in a class defined in one of the following paragraphs is a prescribed undertaking for the purposes of section 18 of the Act:

(a) a program to encourage the public utility's customers, or persons who may become customers of the public utility, to use electricity, instead of other sources of energy that produce more greenhouse gas emissions, by

(i) educating or training those customers respecting energy use and greenhouse gas emissions, carrying out public awareness campaigns respecting those matters, or providing energy management and audit services, or

(ii) providing funds to those persons to assist in the acquisition, installation or use of equipment that uses or affects the use of electricity;

(b) a program to encourage the public utility's customers, or persons who may become customers of the public utility, to use electricity instead of other sources of energy that produce more greenhouse gas emissions, by

(i) educating, training, providing energy management and audit services to, or carrying out awareness campaigns respecting energy use and greenhouse gas emissions for, or

(ii) providing funds to persons who

(iii) design, manufacture, sell, install or, in the course of operating a business, provide advice respecting equipment that uses or affects the use of electricity,

(iv) design, construct, manage or, in the course of operating a business, provide advice respecting energy systems in buildings or facilities, or

(v) design, construct or manage district energy systems;

(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;

(d) a project, program, contract or expenditure supporting a standards-making body in its development of standards respecting

(i) technologies that use electricity instead of other sources of energy that produce more greenhouse gas emissions, or

(ii) technologies that affect the use of electricity by other technologies that 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.

(4) An undertaking is within a class of undertakings defined in paragraph (a) or (b) of subsection (3) only if, at the time the public utility decides to carry out the undertaking, the public utility reasonably expects the undertaking to be cost-effective.

### **3.0 “Free EV Charging for Customers”**

This section addresses issues 1 and 5(a), set out above.

#### **3.1 Definition of the scenario**

In this argument, the phrase “Free EV Charging for Customers” is used as shorthand for the scenario in which a person (not otherwise a public utility) “does not expressly require customers to pay for EV charging services but instead recovers the cost of charging from other services provided to the customers.”

The Free EV Charging for Customers scenario is assumed to include the following elements:

- The provider sells goods or services to Customers (independent of providing EV charging services).
- The provider, at its own expense, operates EV charging services available exclusively to Customers for the purpose of attracting Customers. Access to the free EV charging service requires proof of purchase.<sup>27</sup>
- A Customer (EV driver) who receives EV charging service from the provider does not pay for the EV charging service.
- The provider recovers some portion of its cost of the EV charging services through incremental sales revenue due to increased patronage by Customers attracted by the free EV charging for Customers.
- The price of the provider’s goods or services is the same for all Customers regardless of whether the Customer received or did not receive free EV charging service.

#### **3.2 Statutory interpretation**

The question of whether an entity providing ‘Free EV Charging for Customers’ is a public utility under the UCA is a question of statutory interpretation.

The Commission’s authority to determine questions of statutory interpretation within the inquiry proceeding stems from s.82 of the UCA under which the inquiry is established.<sup>28</sup>

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<sup>27</sup> This assumption makes the strongest case for the provider being a public utility.



Section 82(2) provides that for the purpose of an inquiry the Commission has the same powers as are vested in it by the UCA in respect of an application or complaint.

In general, courts and tribunals, such as the BCUC, prefer to make statutory interpretation decisions based on evidence of a specific situation. However, it is not inappropriate for the Commission to make statutory interpretation findings in a hypothetical context such as the current inquiry. The Commission has done so in previous inquiries such as the Alternative Energy Solutions Inquiry<sup>29</sup> and the Inquiry into an Exemption for Biogas and Biomethane Suppliers.<sup>30</sup>

Questions of statutory interpretation are said by the Canadian courts to be subject to the “modern principle” in which:

“the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”<sup>31</sup>

The Commission has endorsed the “modern principle” of statutory interpretation in proceedings involving the definition of public utility, such as the Alternative Services Inquiry Report,<sup>32</sup> and the SSL-Sustainable Service Ltd. decision.<sup>33</sup>

In the AES Inquiry Report, the panel states that “the grammatical and ordinary sense of the words must be read “harmoniously” with the purpose of the Act” and that “the purpose of the UCA is to regulate natural monopolies and protect consumers from the exercise of economic power.”<sup>34</sup>

The definition of public utility is the foundation of the Commission’s jurisdiction to regulate public utilities under the UCA. The material words in the present case are:

“public utility means a person...who owns or operates in British Columbia, equipment or facilities for (a) the...sale...of electricity...to or for the public...for compensation.” [underline added]

“Compensation” is broadly defined in the UCA. The material portion of the definition is that:

“compensation means a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly.”

Statutory interpretation of the word “compensation” in the UCA requires consideration of:

- the broad definition of compensation,
- within the words “sale of electricity to the public for compensation,”
- in the context of the definition of “public utility” being the foundational prerequisite for the Commission’s authority to regulate under the UCA,

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<sup>28</sup> Order G-10-18.

<sup>29</sup> <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=309>.

<sup>30</sup> <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=391>.

<sup>31</sup> Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974), at p.67, cited in *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27.

<sup>32</sup> [AES Inquiry Report](https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118423/index.do), p.15, <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118423/index.do>.

<sup>33</sup> Decision and Order G-104-18, Appendix A, p.5.

<sup>34</sup> [AES Inquiry Report](https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118423/index.do), p.15, underline added.

- for the purpose of regulating natural monopolies and protecting consumers from the exercise of economic power.

### **3.3 “Free EV Charging for Customers” is not “the sale of electricity to the public for compensation”**

BCSEA-SCBC submit that the Free EV Charging for Customers scenario is not “the sale of electricity to the public for compensation” within the meaning of “public utility” in the UCA. This is an unambiguous conclusion based on the grammatical and ordinary sense of the words in the definitions of public utility and compensation. This conclusion is reaffirmed and strengthened by reading the definitions of public utility and compensation harmoniously with the purpose of the Act to regulate natural monopolies and protect consumers from the exercise of economic power.

The Free EV Charging for Customers scenario does not involve any sale of electricity for compensation. No matter how broadly defined “compensation” is, there is no sale of electricity. The only goods and services being sold in this scenario are the provider’s goods and services sold to Customers (independent of the EVCS.) The price of the provider’s goods and services is the same regardless of whether the Customer partakes of the free EV charging service. The free EV charging service is simply one of the innumerable array of attractions that vendors of goods and services often use to promote sales. Vendors recover the cost of these attractions through sales revenue, whether the attraction is free coffee, free parking or free EV charging.

The only connection between Free EV Charging for Customers and the UCA is that Free EV Charging for Customers involves electricity, which is one of the types of energy referred to in the definition of public utility. In this respect, the free electricity is equivalent to the free heating and cooling that vendors provide to customers to attract their patronage in the winter and summer. Free EV Charging for Customers is no more the sale of electricity for compensation than free air conditioning for customers is the sale of thermal energy for compensation.

The definition of compensation is broad, but no interpretation of “compensation” can turn the provision of free EV charging service into a sale of electricity for compensation. In the Free EV Charging for Customers scenario there is no payment – whether in cash or in kind – for the EV charging service from the EV driver to the vendor. Nor is there any payment “indirectly.” A sale for indirect compensation is where A sells something to C in exchange for C paying B who pays A.

If there was any doubt (which there is not) that Free EV Charging for Customers is not “the sale of electricity to the public for compensation” any doubt would be removed by reading the definitions of “public utility” and “compensation” harmoniously with the purpose of the UCA “to regulate natural monopolies and protect consumers from the exercise of economic power.”<sup>35</sup> Free is not for compensation. The provision of free EV charging service for customers is not a natural monopoly. Customers who partake of free EV charging service for customers are not electricity consumers who require protection from the exercise of economic power.

To be clear, BCSEA-SCBC assume in this argument that an entity (not otherwise a public utility) that provides EV charging service to or for the public in B.C. for payment of money,<sup>36</sup> whether directly from the EV driver or indirectly through a payment network,

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<sup>35</sup> [AES Inquiry Report](#), p.15.

<sup>36</sup> The definition of compensation is not limited to money as the form of payment. However, it is difficult to imagine a realistic scenario in which EV charging service is paid for by a form of

and whether the payment is by kWh, by charging-time or by flat rate (e.g., monthly), is a “public utility” and hence subject to some degree of regulation by the Commission. However, the form of the regulation should be minimal, as argued under the next heading.

#### **4.0 Exemption from regulation for public utilities (not BC Hydro or FBC or another actively regulated public utility) providing EV charging services**

This section addresses issues 2 and 4(a), set out above.

##### **4.1 Scope and Summary**

This section focuses on whether an entity (not BC Hydro or FBC or another actively regulated public utility), that in providing EV charging services is a public utility, should be exempted from regulation, and, if so, how the exemption should be defined.

Note that this section does not address any of the following:

- EV charging services that do not meet paragraph (a) of the definition of public utility, e.g., because the service is not for compensation (these are not public utilities and are not regulated by the Commission),
- EV charging services by entities that are excluded from paragraphs (c) or (d) of the definition of public utility, e.g., entities serving themselves, municipalities, employers serving employees, or landlords serving tenants (these are not public utilities and are not regulated by the Commission), or
- EV charging services by BC Hydro or FBC (addressed in Section 5.0), or by other actively regulated public utilities (addressed in Section 6.0).

EV charging by an entity that in so doing is a public utility and that is also an inactively regulated public utility is addressed in subsection 4.8 of this section.

BCSEA-SCBC respectfully submit the following:

- Entities that are “public utilities” by virtue of providing EV charging services (not BC Hydro or FBC or another actively regulated public utility) should be the subject of a Commission exemption from Part 3 of the Act under s.88(1) and 88(3) with the prior approval of the Minister.
- The reason for the exemption is that the subject EV charging services are not natural monopolies and there is no corresponding need for protection of consumers from the exercise of economic power. This accords with the principle that the Commission should only regulate where required and regulation should not impede competitive markets.
- In addition, this forbearance from regulation is in the public interest and furthers the B.C. energy objectives by removing barriers to the rapid development of the EV sector in substitution of the use of fossil fuels for transportation in B.C.
- The exemption order should be subject only to the minimum requirements to allow the Commission to determine in the future that an exemption is no longer applicable or warranted.

- The simplest and most effective approach would be an exemption from Part 3 except sections 42, 43(1)(a), 43(b)(i), 43(2) to 43(5), and 44, similar to the Micro TES and Strata owned TES exemptions.
- The Bakerview EcoDairy exemption model is not preferred, because it would require each subject EVCS provider to file an annual report to the Commission. This would be onerous for many would-be providers of EV charging service and would likely discourage them from providing EV charging service.
- There should be a single “class of cases” including all entities providing EV charging services that in doing so are public utilities and that are not otherwise public utilities. For greater certainty, the class of cases should include the Tesla Supercharger Network, and EV charging services to Strata Owners in parking facilities owned by a Strata Corporation. Attempting to customize the degree of the exemption according to factors such as charging level or location would likely be ineffective and impractical.
- The recommendation for an exemption (from Part 3 except s.42, 43 (omitting s.43(1)(i)), and 44) also applies to an inactively regulated public utility, such as an IPP, or a provider of Micro TES, Strata owned TES or Stream A TES entities, that is a public utility by virtue of providing EV charging services.

## 4.2 Organization

This section is organized as follows:

- Subsection 4.3 addresses the legal test for an exemption under s.88(3).
- Subsection 4.4 discusses the Alternative Energy Services Inquiry Report regarding the conditions under which a public utility providing products and services outside traditional utility activities should be exempt from regulation.
- In subsection 4.5, BCSEA-SCBC argue that, applying the principles and guidelines of the AES Inquiry Report, public utilities providing EVCS (not otherwise a public utility) should be exempt from regulation. Table 1 compares Public Utilities Providing EVCS (not otherwise an actively regulated public utility) with the Indicia of a Natural Monopoly from the AES Inquiry Report.
- Subsection 4.6 provides reasons for exemption of EVCS from economic regulation.
- Subsection 4.7 provides a review of selected Commission exemption orders, with a focus on the exceptions and conditions that are applied. Table 2 is a summary of examples of exemption from regulation. Table 3 sets out BCSEA-SCBC’s comments on exemption provisions for Public Utilities Providing EVCS (not otherwise an actively regulated public utility).
- Subsection 4.8 addresses the intersectional category in which an entity is a public utility by virtue of providing EV charging service and is also an inactively regulated public utility for some other reason, such as being a provider of Micro TES, Strata owned TES, or Stream A TES.

## 4.3 The legal test for an exemption

A section 88(3) exemption order should be issued, with the advance approval of the LGIC, when such exemption serves the objects and purposes of the Act and it is in the

public interest to do so: Canal Plant Agreement Exemption Decision and Order G-41-06.<sup>37</sup> This test was quoted with approval by the Commission panel in Spirit Bay Utilities Ltd., Order G-175-16, December 1, 2016.<sup>38</sup>

#### 4.4 The Alternative Energy Services Inquiry Report

The Commission's December 2012 AES Inquiry Report is the seminal document on the conditions under which a public utility providing products and services outside traditional utility activities should be exempt from regulation.

The first question is whether the activity requires regulation. The AES Inquiry Report states:

"Before a discussion can be held on how to regulate new business activities, it is essential to first determine if the activity requires regulation."<sup>39</sup>

The AES Inquiry panel adopted two "key principles":

- i) Only regulate where required.
- ii) Regulation should not impede competitive markets.

The EV Charging Inquiry panel states that "The Commission intends to adopt these key principles in this Inquiry."<sup>40</sup>

The AES Inquiry panel also adopted the following Guideline:

"Regulation is required when:

- natural monopoly characteristics are present and there is a need to regulate to protect the public interest; and/or
- legislation (such as the *Utilities Commission Act* or the *Clean Energy Act*), requires an activity to be regulated."<sup>41</sup>

Regarding the second point in the Guideline, note that the discussion in this section relates only to entities that in providing EV charging services are "public utilities" and hence are subject to regulation by the Commission. So the pertinent question is whether "natural monopoly characteristics are present and there is a need to regulate to protect the public interest."

What, then, constitutes a "natural monopoly"? The AES inquiry panel provides the following explanation, which warrants quoting at length:

"Dr. Jaccard states "[n]atural monopolies occur in sectors of the economy in which extreme economies-of-scale mean the monopoly firm can provide service at a lower cost than two or more competing firms."  
(Exhibit C12-5, p. 7)

The market conditions which result in the creation of a natural monopoly may include:

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<sup>37</sup> In the Matter of An Application by FortisBC Inc. for an Exemption from the Act regarding the Canal Plant Agreement Subagreement, Order G-41-06, Appendix A, p. 6, underline added.  
<https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/115996/index.do>.

<sup>38</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/212630/index.do>.

<sup>39</sup> AES Report, p.6, pdf p.10, underline added.

<sup>40</sup> Exhibit A-2.

<sup>41</sup> AES Report, p.7, pdf p.11, underline added.

- Large initial capital costs;
- Significant barriers to entry for competitors;
- Infrastructure which is not cost-effective or otherwise amenable to duplication;
- Subadditivity of costs:<sup>[42]</sup> all the industry output (or array of outputs) demanded can be produced most efficiently only by a single firm; and
- Economies of scale, with decreasing costs or (internal) increasing returns to scale over the demanded range of output. [citations omitted]

In a market with natural monopoly characteristics, the lowest cost to provide a service can only be achieved by a single firm, and the presence of competition, or entry of other firms, would only serve to increase costs to society. (Bonbright *et al.*, 1988: 8, Exhibit B-11, BCUC 1.149.0)

Because a public utility tends to represent a single supplier of an essential product or service, its customers are basically captive, lacking the ability to readily change providers, and the demand curve is “inelastic”, such that a change in price will not result in an equivalent change in demand.

Public utilities are typically natural monopolies because their fixed costs, as determined by their technology and demand, are lower, such that it is a more efficient use of society’s scarce resources for a single firm to supply the market than multiple firms. (ATCO, para. 3 [*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 SCR 140])<sup>43</sup>

The AES Inquiry Panel explains the role of economic regulation by the Commission as follows:

“Monopolies may abuse their power by way of:

- Excessive Pricing - resulting in excess monopoly profits;
- Predatory Pricing- where the monopoly is able to discourage competitors from entering the market through pricing below cost in the short term;
- Cross-subsidization - excessive pricing in some areas, subsidizing low cost pricing in others.

Regulation exists to protect the public from potential monopolistic behaviour on the part of a public utility while ensuring the continued quality of an essential service.

It is the regulator’s function to prevent the abuse of monopoly power, so that customers have access to the utility product or service at a fair price, but at the same time allow the utility the opportunity to earn a fair return

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<sup>42</sup> “For a single or multi-product firm, cost **subadditivity** implies that the output level (or output bundle) is produced at least cost by one firm.” *Body of Knowledge on Infrastructure Regulation* ([link](#)).

<sup>43</sup> AES Report, pp.7-8, pdf pp.11-12.

on its investment so that it can continue to operate and attract the capital required to sustain and/or grow its business.

The *Utilities Commission Act* is an example of public utility regulation that balances the public interest between monopoly, where monopoly is accepted as necessary, and the consumer protection provided by competition. (*BC Hydro v. BCUC*, para. 46)<sup>44</sup>

Following a discussion of other aspects of the role of the economic regulator, the AES Inquiry Panel states in its determination:

“Regulation is costly, time-consuming, and limited by informational asymmetries. It is only in natural monopoly situations where consumer protection is needed that these limitations are outweighed by the benefits of regulation.

Based on the above, the Commission Panel finds as a fundamental principle that regulation is only appropriate where required and is driven by the inability of competitive forces to operate with greater efficiency and effectiveness than a sole service provider.”<sup>45</sup>

The broad definition of public utility in the UCA can envelope situations in which economic regulation is not warranted. The AES Inquiry Panel states:

“The definition of public utility is set out in the *UCA* but, given the discussion on the economic purposes of regulation, applying the legal definition of public utility does not always lead to an outcome that makes the most economic sense.”<sup>46</sup>

The overly broad definition of public utility could, in theory, be corrected by a legislative amendment. In the absence of a statutory clarification, the AES Inquiry Panel recommends that the Commission use its exemption authority where it finds that regulation is not warranted. The panel states:

“Given the current lack of clarity in the *UCA* the Commission Panel recommends the use of exemptions, which are contemplated under the UCA, where the Commission finds regulation is not warranted.”<sup>47</sup>

A corollary of the principle that regulation is required only when natural monopoly characteristics are present and there is a need to regulate to protect the public interest is that where the definition of public utility is engaged but natural monopoly characteristics are not present, an exemption from regulation may be warranted. In the words of the Commission panel in the 2016 Spirit Bay decision:

“Therefore, if monopoly characteristics are not present, or are somehow mitigated, for example by an alternative regulatory body, an exemption from regulation under the UCA may be warranted.”<sup>48</sup>

Examples of exemption orders made by the Commission are set out in subsection 4.7 below.

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<sup>44</sup> AES Report, p.8, pdf p.12, footnote removed.

<sup>45</sup> [AES Inquiry Report](#), p.14, pdf p.18, underline added.

<sup>46</sup> [AES Inquiry Report](#), p.15, pdf p.19, underline added.

<sup>47</sup> [AES Inquiry Report](#), p.16, pdf p.20, underline added.

<sup>48</sup> Spirit Bay Utilities Ltd., G-175-16, Appendix A, pp.8-9, underline added.

**4.5 Exemption for Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility)**

BCSEA-SCBC respectfully submit that entities that are “public utilities” by virtue of providing EV charging services (and that are not BC Hydro or FBC or another actively regulated public utility) should be the subject of a Commission exemption from Part 3 of the Act under s.88(1) and 88(3) with the prior approval of the Minister.<sup>49</sup>

For these public utilities, the characteristics of natural monopolies are not present, and there is no corresponding need for protection of consumers from the exercise of economic power.

Table 1, below, provides a comparison of the characteristics of “Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility)” with the characteristics of a natural monopoly cited by the AES Inquiry Panel (quoted in subsection 4.4).

<b>Table 1. Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility), and Indicia of Natural Monopoly</b>	
<b>Indicia of Natural Monopoly</b>	<b>Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility)</b>
sectors of the economy in which extreme economies-of-scale mean the monopoly firm can provide service at a lower cost than two or more competing firms	No. EVCS is not subject to extreme economies of scale.
Large initial capital costs	No. Initial capital costs of EVCS are low. A DCFC station may have an initial capital cost in the ballpark of \$100,000.
Significant barriers to entry for competitors	No. In many instances there is not a positive business case for an EV charging station. However, there are no significant barriers to entry as such.
Infrastructure which is not cost-effective or otherwise amenable to duplication	No. EVCS infrastructure can be replicated in different locations.
Subadditivity of costs: all the industry output (or array of outputs) demanded can be produced most efficiently only by a single firm	No. The EVCS sector involves multiple EV charging stations at multiple locations.
Economies of scale, with decreasing costs or (internal) increasing returns to scale over the demanded range of output	No. The EVCS sector as a whole is subject to minimal economies of scale. The average cost of providing EV charging stations does not decline significantly with a greater number of EV charging stations.
the lowest cost to provide a service can only be achieved by a single firm, and the	No. There is no reason that EV charging service cannot be provided by many

<sup>49</sup> The Minister’s prior approval is routinely provided by way of an order in council by the Lieutenant Governor in Council.



presence of competition, or entry of other firms, would only serve to increase costs to society	different firms without increasing the costs to society.
fixed costs, as determined by [the entities'] technology and demand, are lower, such that it is a more efficient use of society's scarce resources for a single firm to supply the market than multiple firms	No. It would not a more efficient use of society's resources to have EVCS provided to the market by a single firm.
<b>Consumer Protection Indicia of a Natural Monopoly</b>	<b>Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility)</b>
a single supplier	Generally, no. Many entities provide EV charging services.
of an essential product or service	No. EV Charging is not an essential service.
its customers are basically captive	Generally, no. EV drivers are not tied to a specific EVCS; they have alternatives. For home EV charging service, Strata Owners may be tied to a specific EV charging service provided by or for the Strata Corporation. However, Strata Owners have remedies under the <i>Strata Property Act</i> . <sup>50</sup>
lacking the ability to readily change providers	Generally, no. EV drivers have alternative options for EV charging service, subject to convenience factors.
the demand curve is "inelastic", such that a change in price will not result in an equivalent change in demand	It can be reasonably assumed that the demand curve for EVCS is not inelastic. However, the Inquiry's evidentiary record does not contain quantitative EVCS price elasticity information. There is anecdotal information that the number of EV charging sessions declined when an EVCS changed from free service to a charge for service.
<b>BCSEA-SCBC Conclusion</b>	<b>Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility) do not meet the indicia of a natural monopoly or of a need for protection of consumers from economic power.</b>

<sup>50</sup> As noted in the exemption order for Strata owned TES providers, Order G-120-14.

#### **4.6 Disadvantages of economic regulation of EV charging service**

The generic disadvantages of economic regulation of EV charging services where such regulation is not required include:

- potential discouragement of investment in facilities for providing EV charging services due to real or perceived regulatory expenses or delay,
- potential stifling of innovation in the design and delivery of EV charging services and possible electric system benefits, due to rigid rates and rate structures,
- limiting EV customer options for EV charging service types, rate models and payment mechanisms,
- difficulty and expense in determining appropriate rates and rate structures where there is little or no common cost of service factors among and between different EV charging service providers, and
- impeding the development of competitive markets for EV charging services.<sup>51</sup>

#### **4.7 Exemptions and exceptions from exemption**

This subsection reviews selected Commission orders under s.88(1) and 88(3) exempting persons or classes of cases from regulatory provisions of the UCA. The focus is on the breadth of the exemption – i.e., the exceptions and conditions – and the reasons, where provided, for limiting the breadth of the exemption.

The following examples are discussed:

- 4.7.1 Strata Plan VR1104, Order G-79-12
- 4.7.2 Biogas and Biomethane Suppliers, Order G-126-13
- 4.7.3 Overwaitea Food Group, Order G-123-13
- 4.7.4 Thermal Energy Systems Exemptions
- 4.7.5 Vancouver Renewable Energy Cooperative, Order G-7-15
- 4.7.6 Bakerview EcoDairy Ltd., Order G-71-16

In subsection 4.7.7, Table 2 provides a summary table of the selected exemption orders.

In subsection 4.7.8, Table 3 provides BCSEA-SCBC's comments on the appropriateness, for public utilities providing EVCS (not BC Hydro or FBC or another actively regulated public utility), of the exemption provisions used in the selected examples.

Subsection 4.7.9 addresses BCSEA-SCBC's recommendation that there be a single "class of cases" for the proposed exemption.

##### **4.7.1 Strata Plan VR1104 ~ Application for an Exemption from Regulation as a Public Utility, Order G-79-12, June 14, 2012<sup>52</sup>**

Strata Plan VR1104 owns a building in Vancouver. It is a public utility because it resells electricity to TM Mobile and Telus regarding rooftop equipment under leases greater

<sup>51</sup> Exhibit C2-6, BCSEA-SCBC evidence, pp.10-11.

<sup>52</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118576/index.do>

than five years.<sup>53</sup> Strata Plan VR1104 applied to the Commission for an exemption from regulation under s.88(3). Other landlords are in similar factual situations, reselling electricity to telecommunications service providers (TSPs) who are also tenants of the respective landlords under leases for a term of more than five years.

With the advance approval of the LGIC, the Commission by Order G-79-12 under s.88(1) and 88(3) exempted from Part 3 of the Act the “class of persons” who resell electricity to a TSP under a lease for a term of more than five years. To be covered by the exemption a landlord must file a copy of the lease with the Commission. In addition, the exemption includes the following residual authority clause:

“2. The exemption to the person referred to in Directive 1 of this Order remains in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person, orders that the exemption no longer applies to the person referred to in Directive 1 of this Order.”

#### **4.7.2 Inquiry into an Exemption for Biogas and Biomethane Suppliers, Order G-126-13, August 20, 2013<sup>54</sup>**

In 2013, the Commission initiated an Inquiry<sup>55</sup> into an exemption from certain provisions of the UCA for biogas and biomethane suppliers when selling to a “public utility” (i.e., FortisBC Energy Inc.) The Biogas Inquiry was initiated under s.82(1) of the UCA, like the EV Charging Service Inquiry.

The stated purpose of the Biogas Inquiry was to

“reduce the regulatory burden of the biogas and biomethane industry, while enabling the Commission to have continued regulatory oversight of the biogas and biomethane energy supply contracts through the purchasing public utilities’ regulatory processes.”<sup>56</sup>

During the inquiry, the Commission invited submissions from interveners on specific sections of the UCA to be considered for exemption, similar to the invitation by the EVCS Inquiry Panel in Exhibit A-35.

After receiving submissions from interveners, on May 23, 2013 the Commission issued an Inquiry Report<sup>57</sup> in which it determined that the Commission should proceed with an exemption from specified provisions of the UCA. The Inquiry Report attaches a draft order in council for the Lieutenant Governor in Council (LGIC) to give its advance approval under UCA s.88(3), along with a draft of the final order that the Commission would issue upon approval.

On August 1, 2013, the LGIC approved Order in Council 347/13, granting to the Commission advance approval under UCA s.88(3) to exempt biogas and biomethane suppliers when selling to a public utility (the “class of cases”) from specified sections of the UCA.<sup>58</sup>

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<sup>53</sup> In the definition of public utility, the exclusion of a landlord selling electricity to its tenant does not include a lease of more than five years.

<sup>54</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118661/index.do>

<sup>55</sup> <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=391>

<sup>56</sup> Biogas Inquiry Report, p.2, pdf p.5.

<sup>57</sup> [http://www.bcuc.com/Documents/Proceedings/2013/DOC\\_34774\\_05-24-2013-BCUC\\_Biogas-Inquiry\\_Report.pdf](http://www.bcuc.com/Documents/Proceedings/2013/DOC_34774_05-24-2013-BCUC_Biogas-Inquiry_Report.pdf).

<sup>58</sup> Order G-126-13, Attachment.

On August 20, 2013, the Commission issued Order G-126-13,<sup>59</sup> finalizing the exemption under s.88(3) of “biogas and biomethane suppliers when selling to a public utility” that are “not otherwise a public utility and not exempt from all rate provisions of Part 3 of the UCA” from s.71 and Part 3 other than sections 42 and 43 (1) (a) and (b) (i) and (2) to (5). The exemption order also includes a residual authority clause as follows:

“2. The exemption to the person referred to in Directive 1 of this Order remains in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person, orders that the exemption no longer applies to the person referred to in Directive 1 of this Order.”<sup>60</sup>

The Commission’s reasons for the exemption order are provided in the Biogas Inquiry Report rather than in Order G-126-13 itself. The reasons are important inasmuch as they may be relevant to the potential exemption of providers of EV charging services.

The Biogas Inquiry Panel begins by citing as a “key principle” of the AES Inquiry Report that:

“The Commission should only regulate where required and regulation should not impede competitive markets.”<sup>61</sup>

The ultimate test applied by the panel is whether the exemption order is in the public interest.<sup>62</sup>

Regarding the residual authority clause (quoted above), the Biogas Inquiry Panel states:

“The Commission Panel considers that the ability for the Commission to determine after a hearing that the exemption no longer applies to the person is paramount since in spite of an exemption from certain parts of the UCA, the person remains a public utility under the UCA and subject to Commission regulation. For this reason, the Commission reserves the right to order that an exemption no longer applies. The Panel notes that pursuant to section 83 of the UCA, the Commission has discretion to act upon complaints. Any hearing on a complaint will follow appropriate administrative fairness to determine if a person no longer qualifies for the exemption from regulation. The Commission Panel expects this situation to occur infrequently, if at all, given the aligned interests of the supplier and utility customer to carry out their obligations as agreed under their supply contract. For these reasons, the Commission considers it a necessity to include the clause that after a hearing, the Commission can determine the exemption no longer applies to the person.”<sup>63</sup>

The panel rejected intervenor submissions that the exemption from Part 3 should be without any exclusions. However, the panel said that it “does not intend for the applicable sections of the UCA to be an onerous obligation on the biogas and biomethane supplier.”<sup>64</sup> And the panel did conclude that retention of the applicability of section 38 (public utility must provide service) and section 44 (duty to keep records) is not required.

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<sup>59</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118661/index.do>.

<sup>60</sup> Order G-126-13, section 2.

<sup>61</sup> Biogas Inquiry Report, p. i, pdf p.3.

<sup>62</sup> Biogas Inquiry Report, p.7, pdf p.10.

<sup>63</sup> Biogas Inquiry Report, p.7, pdf p.10.

<sup>64</sup> Biogas Inquiry Report, p.8, pdf p.11.

The panel explained the retention of s. 42 (duty to obey orders) as follows:

“The Commission notes that section 42 (duty to obey orders) does not require the public utility to read all the Orders of the Commission. Generally, any applicable Orders to a public utility exempt from regulation will be specific and known to them. The Commission Panel determines that section 42 (duty to obey orders) is an essential authority of the Commission in the regulation of a utility irrespective of its exemption from certain other parts of the UCA. For this reason an exemption from section 42 is not warranted.”<sup>65</sup>

The panel explained the retention of most of the subsections of s. 43 (duty to provide information) as follows:

“The Commission Panel believes that in order to determine in a hearing if an exemption no longer applies the Commission requires the ability to obtain relevant information from the person, section 43 (duty to provide information) enables this. If the person is at the time of the hearing exempt from supplying certain information it becomes difficult to make a determination in the hearing.”<sup>66</sup>

The panel ‘carved out’ s. 43(1)(b)(ii) – which requires annual reports on demand-side management – because it is not applicable to biogas and biomethane producers.<sup>67</sup>

In summary, the panel said that the combined exemption and exclusions from exemption were not expected to require any ongoing reporting by the biogas and biomethane public utilities. The panel states:

“It is expected that the exempted biogas and biomethane suppliers would keep adequate documents in the normal course of doing business. In the event of a hearing upon a complaint, the Commission will have the ability to obtain information from the utility to make an informed determination on the matter.”<sup>68</sup>

The Biogas Inquiry Panel addressed the term “not otherwise a public utility,”<sup>69</sup> which is also used by the EVCS Inquiry Panel (and in the definition of public utility). An intervener had submitted that the term was confusing. The Biogas panel said the term is “necessary in any general exemption Order to make it clear that the exemption from regulation does not apply to a natural gas or electric utility company that is fully regulated.”<sup>70</sup>

Regarding a legal wording issue, the Biogas panel recognized that the words “public utility” within the phrase “not otherwise a public utility” actually include not only the intended fully regulated public utilities but also public utilities that are subject to an exemption from Part 3 (i.e., for a reason other than being a biogas or biomethane supplier). To address that issue the Biogas panel augmented the phrase so that it reads:

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<sup>65</sup> Biogas Inquiry Report, p.8, pdf p.11.

<sup>66</sup> Biogas Inquiry Report, p.8, pdf p.11.

<sup>67</sup> Similarly, s.43(1)(b)(ii) is carved out of the exclusion of s.43 from the exemption from Part 3 in the Bakerview EcoDairy exemption, and in the straw man regulatory framework presented by the EVCS Inquiry Panel in Exhibit A-35.

<sup>68</sup> Biogas Inquiry Report, p.9, pdf p.12.

<sup>69</sup> I.e., the class of cases for exemption includes a person of a certain description that is “not otherwise a public utility.”

<sup>70</sup> Biogas Inquiry Report, p.9, pdf p.12.

“not otherwise a public utility and not exempt from all rate provisions of Part 3 of the UCA.” The panels states:

“The Commission Panel believes this additional wording will provide clarity that the biogas and biomethane exemption is also applicable for the person who is already a public utility and who is also exempt from regulation from all the rate provisions of Part 3 of the UCA for any of its non-biogas and non-biomethane public utility activities. Such as situation would address an IPP exempted from regulation pursuant to Ministerial Order M-22-0205<sup>[71]</sup>.”<sup>72</sup>

As discussed in subsection 4.8, BCSEA-SCBC recommend that the EV Charging Inquiry Panel take the same approach, that is, to define the class of cases so that the Part 3 exemption applies to a public utility that provides EV charging service and is “not otherwise a public utility and not exempt from all rate provisions of Part 3 of the UCA.”<sup>73</sup>

#### **4.7.3 Overwaitea Food Group, Order G-123-13, August 15, 2013<sup>74</sup>**

While the (partial) exemption of biogas and biomethane suppliers was the outcome of an inquiry by the Commission, the (partial) exemption in the Overwaitea Decision and Order G-123 was the outcome of an application by a particular entity. The Overwaitea exemption, which was issued only a week before the Biogas exemption, is notable because while it includes the same residual authority clause that is in the Biogas exemption order (quoted above) it does not contain the exceptions of section 42 and most of section 43 from the exemption that are part of the Biogas exemption order.

Overwaitea Food Group applied to the Commission in 2010 for an order exempting two of its companies from regulation as a public utility under s.88(3) of the UCA. The Overwaitea companies resold electricity to certain tenants and subtenants who have leases for a term of greater than five years. As such, the Overwaitea companies were not excluded from the definition of public utility by paragraph (d).

On May 31, 2012, the LGIC adopted Order in Council 369/2012 providing advance approval under s.88(3). On August 15, 2013, the Commission issued Order G-123-13 under s.88(3). The order exempts the Overwaitea companies from Part 3 of the UCA, subject to conditions specific to the resale of electricity and, notably for present purposes, a residual authority clause with the same wording as the clause in the Biogas exemption order quoted above.

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<sup>71</sup> Ministerial Order M-22-0205, dated June 6, 2012, is an exemption by the Minister under s.22 of the UCA, as distinct from an exemption under s.88(3) by the Commission with advance approval of the Minister. Ministerial Order M-22-0205 exempts persons who are not otherwise a public utility from Part 3 of the UCA with respect to the production and sale of electricity to BC Hydro or Powerex (i.e., Independent Power Producers (IPPs)):

<http://www.bcuc.com/Documents/SpecialDirections/M202-MO22-0205.pdf>. Other ministerial exemptions are listed on the BC Laws website under *Utilities Commission Act*, Regulations, here: <http://www.bclaws.ca/civix/content/complete/statreg/7900609/96473/reg96473/?xsl=/templates/brrowse.xsl>. The Commission’s website has a list of s.22 and .88(3) exemptions under Special Directions and Regulations, Exemptions, here: <http://www.bcuc.com/proceedings-orders-decisions/special-directions-regulations.html>.

<sup>72</sup> Biogas Inquiry Report, p.9, pdf p.12.

<sup>73</sup> The double negative could be replaced by saying that “the exemption applies to a public utility providing EV charging service that is not otherwise a public utility subject to the rate provisions of the UCA.”

<sup>74</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/118633/index.do>.

#### 4.7.4 Thermal Energy Systems exemptions

Coming out of the December 2012 AES Inquiry Report and its recommendations for exemptions from regulation where regulation is not warranted, the Commission conducted a stakeholder comment process on a proposed regulatory framework for Thermal Energy Systems (TES) including a proposed Exemption for certain TES. One of the outcomes was an amended January 6, 2014 Decision and Order G-231-13A finding that exemptions from certain provisions of the UCA would conserve the public interest and stating that the Commission would seek approval of the LGIC for these exemptions. On June 20, 2014, the government approved Orders in Council 399, 400 and 401 giving advance approval to the Commission to exempt certain Thermal Energy Systems from certain provisions of the UCA as requested. Following further submissions, on August 27, 2014, the Commission issued the exemption orders:

- G-119-14 for Micro TES providers,<sup>75</sup>
- G-120-14 for Strata owned TES providers,<sup>76</sup> and
- G-121-14 for Stream A TES providers.<sup>77</sup>

Each of these orders recites that “In the AES Inquiry Report, the Commission recommends the use of exemptions, which are contemplated under the UCA, where the Commission finds regulation is not warranted.”

The Micro TES exemption order and the Strata owned TES exemption order are similar in that they provide an exemption from Part 3 except sections 42, 43 and 44. They have no registration or reporting requirements, and no residual authority clause. The Stream A TES exemption order is less expansive, as discussed below.

The Strata owned TES exemption order applies to a Strata Corporation that owns or operates a TES exclusively for its Strata Owners. The order notes that remedies outside the UCA are available to customers of Strata owned TESs:

“The *Strata Property Act*, Part 10 outlines recourse measures Strata Owners may take against Strata Corporations and arbitration processes to resolve disputes;”

In Decision and Order G-27-15 on March 2, 2015,<sup>78</sup> the Commission reconsidered and declined to change, among other things, its previous decision that the Micro TES exemption includes a Micro TES providing service to a Strata Corporation.<sup>79</sup>

The Commission’s rationale for excepting sections 42, 43 and 44 from the Part 3 exemption is to enable the Commission to investigate a complaint that a specific Micro or Strata owned TES does not meet the requirements for exemption. This is explained in the TES Regulatory Framework Guidelines. These were approved by Order G-127-14 on August 28, 2014,<sup>80</sup> and revised by Order G-27-15 on March 2, 2015.<sup>81</sup> The Guidelines state:

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<sup>75</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119172/index.do>.

<sup>76</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119194/index.do>.

<sup>77</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119212/index.do>.

<sup>78</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119554/index.do>.

<sup>79</sup> I.e., where the Micro TES is not owned or operated by the Strata Corporation, in which case the Strata owned TES exemption would apply.

<sup>80</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119083/index.do>.

<sup>81</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119554/index.do>.

“Upon receipt of a complaint relating to an Exempt TES, the scope of the Commission’s review will be limited to whether the TES meets the criteria to qualify for an exemption or whether the TES should be characterized as a Stream A or Stream B TES. The Commission will review whether the capital cost of the TES is, or likely is, greater than the maximum threshold for a Micro TES or the TES is owned by a Strata Corporation and is providing energy exclusively to its Strata Unit Owners. If that does appear to be the case, the Commission may take further action, such as requiring registration of the TES and further review of rates and contracts. The owner of the TES should be prepared to provide evidence concerning the costs, ownership of and/or the customers of the TES.

Accordingly, upon receiving a complaint concerning an exempt TES, any investigation the Commission may undertake will be limited to what is required to determine whether the TES meets the requirements for exemption. For this reason, sections 42, 43 and 44 of the UCA, which deal with a public utility’s duty to obey Commission orders and to keep and provide information that the Commission requests, applies to exempt TES. If, as a result of an investigation, the Commission determines that a TES does not meet the requirements for exemption, the customer’s complaint will be investigated further.”<sup>82</sup>

The Stream A TES exemption order recites the AES Inquiry Report’s principles and guidelines for the appropriate forms for regulation as follows:

- i. Where regulation is required use the least amount of regulation needed to protect the ratepayer.
- ii. The benefits of regulation should outweigh the costs.
- iii. The form of regulation should:
  - a) provide adequate customer protection in a cost effective manner;
  - b) consider administrative efficiency;
  - c) consider the level of expenditure, the number of customers, the sophistication of the parties involved and the track record of the utility in undertaking similar projects; and
  - d) require the provision of sufficient information to allow the Commission to assess the new business activity, and any rates to be set, against BC’s Energy Objectives and the requirements of the *Utilities Commission Act* (UCA) and the *Clean Energy Act*.”

Under s.88(1) and 88(3), the Stream A TES exemption order exempts the providers of Stream A thermal energy systems<sup>83</sup> from 44.1, 45 and 59-61 of the UCA. These sections relate to long-term planning, certificates of public convenience and necessity, and rates approval, respectively.

The Stream A TES exemption order contains a residual authority clause:

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<sup>82</sup> Revised TES Regulatory Framework Guidelines, pp.7-8, pdf pp.27-28, underline added, bold in the original. Order G-27-15,

<https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119554/index.do>.

<sup>83</sup> I.e., thermal energy systems “with a capital cost less than a maximum threshold and greater than a minimum threshold, as established by the Commission from time to time after a hearing.”



“The exemption of a person for a specific Thermal Energy System referred to in Directive 1 of this Order remains in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person for which sufficient notice has been given to the person the Commission believes may be affected, orders that the exemption no longer applies to the person referred to in Directive 1 of this Order.”

The Stream A TES exemption order requires a specific TES provider to obtain the Commission’s confirmation that the exemption applies to it:

“The exemption referred to in Directive 1 of this Order only applies if:

- i. The person files information that allows the Commission to determine that this Order applies to the person’s specific Thermal Energy System; and
- ii. The Commission determines that this Order applies to the person’s specific Thermal Energy System.”

The Stream A TES exemption order is described here for completion. It is not suggested that it should be used as a model for an exemption of Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility).

#### **4.7.5 Vancouver Renewable Energy Cooperative, Order G-7-15, Jan. 29, 2015<sup>84</sup>**

The Vancouver Renewable Energy Cooperative (VREC) specializes in small renewable energy systems. Included in its offerings are small generation systems sold to BC Hydro customers for participation in BC Hydro’s Net Metering program. To mitigate the upfront cost of such systems, VREC developed a business plan for a leasing structure in which it would install, own, and maintain the generation equipment at the customer’s site for compensation by way of lease payments based on energy delivered from the equipment. VREC was concerned that in doing so it would be a public utility under the UCA. On February 12, 2014, VREC applied to the Commission for an exemption from the provisions of Part 3 of the UCA for persons who are not otherwise a public utility and their equipment, projects or systems that would be leased to a BC Hydro customer under the BC Hydro Net Metering program using technologies, which fall within the definition of “clean or renewable resource” in the CEA.

On January 29, 2015, with the advance approval of the LGIC, the Commission issued Order G-7-15 under s.88(1) and 88(3) exempting from Part 3 and s.71 a person, not otherwise a public utility, who offers lease agreements or energy supply contracts which provide lessees or buyers respectively with electricity from either solar or wind energy systems or facilities where the value of the installed system does not exceed \$500,000. The exemption is subject to a residual authority clause:

“The exemption of a person referred to in this order will remain in effect until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested party for which sufficient notice has been given to the persons the Commission believes may be affected, orders that the exemption no longer applies to that person.”

In addition, the exemption includes a ‘safe and proper operation’ direction:

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<sup>84</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119448/index.do>.

“The Commission directs the persons exempted from Part 3 of the *Utilities Commission Act* by this order are responsible for the safe and proper operations of the systems consistent with the requirements of the regulations of the *Safety Standards Act*.”

The VREC exemption order does not include any exceptions of specific sections of Part 3.

#### **4.7.6 Bakerview EcoDairy Ltd., Order G-71-16, May 19, 2016<sup>85</sup>**

On November 24, 2015, Bakerview EcoDairy Ltd. (EcoDairy)<sup>86</sup> filed an application with the Commission for exemption from Part 3 of the UCA in relation to EcoDairy’s proposed resale of electricity via its EV DCFC station. The application states that EcoDairy plans a \$0.35 per kilowatt-hour fee for the provision of EV charging services to the public.

The EcoDairy DCFC station is one of 13 DCFC stations in a BC Hydro pilot project in which BC Hydro leases the stations to participating site host/operators. The pilot project is part of the Province’s Clean Energy Vehicle Program that is “designed to offer British Columbians with more affordable clean transportation options.” Twelve of the site host/operators are municipalities and hence excluded from the definition of public utility. EcoDairy is the only private sector host/operator.

On May 19, 2016, with the advance approval of the LGIC, the Commission issued Order G-71-16 under s.88(3) exempting EcoDairy regarding its DCFC station from Part 3 of the UCA except for sections 25, 38, 42, 43, 44, and 49. EcoDairy is exempt from the 43(1)(b)(ii) requirement to submit a DSM plan.

For reference, the sections from which EcoDairy is not exempted are:

- s.25 – Commission may order improved service by public utility
- s.38 – Public utility must provide service
- s.42 – Public utility’s duty to obey orders of the Commission
- s.43 – Public utility’s duty to provide information at the Commission’s request<sup>87</sup>
- s.44 – Public utility’s duty to keep records required by the Commission
- s.49 – Commission may order public utility to keep and provide accounts and reports.

The EcoDairy exemption order states that the exemption shall remain in effect until either of the following takes place:

- Bakerview EcoDairy Ltd. and British Columbia Hydro and Power Authority cancel or terminate the *Direct Current Fast Charging Equipment Lease Agreement*.

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<sup>85</sup> <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/144369/index.do>.

<sup>86</sup> “EcoDairy in partnership with Science World is a one-of-a-kind demonstration dairy farm in Abbotsford BC committed to inspiring young minds to discover the science and technology behind where their food comes from.” Exhibit B-1, <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=524>.

<sup>87</sup> Excluding 43(1)(b)(ii) where a public utility must provide to the BCUC an annual report regarding demand-side measures.

- Further order of the Commission for reasons that may include the determination of any complaint the Commission receives from a person whose interests are affected, pursuant to section 83 of UCA.

In addition, the order specifies that:

“Pursuant to section 38 of the UCA, Bakerview EcoDairy Ltd. shall operate and maintain its facilities to ensure safe, reliable and adequate service.”<sup>88</sup>

Notably, the order requires EcoDairy to provide an annual report to the Commission:

“Pursuant to section 49 of the UCA, the Commission directs Bakerview EcoDairy Ltd. to provide an Annual Report to the Commission by February 15 each year in the form set out in Appendix B or as the Commission may otherwise require.”

The Commission confirmed that with the \$0.35 per kilowatt-hour fee for the provision of EV charging services to the public, EcoDairy’s EV DCFC station will be operating for resale of electricity to the public for compensation and will therefore be a public utility as defined by the UCA.

#### 4.7.7 Summary Table of Selected Exemption Orders

Table 2, below, summarizes the exceptions and conditions the Commission has applied in various exemption decisions.

<b>Table 2. Examples of Exemption from Regulation</b>		
<b>Name</b>	<b>Order</b>	<b>Brief Description</b>
Strata Plan VR1104	G-79-12	Exemption from Part 3, residual authority clause, safe operations requirement, filing requirements.
Biogas and biomethane	G-126-13	Exemption from Part 3 and s.71, except s.42 and s.43(1)(a) and (b)(i) and (2) to (5). Residual authority clause
Overwaitea	G-123-13	Exemption from Part 3. Conditions re resale of electricity, residual authority clause
Micro TES	G-120-14	Exemption from Part 3, except s.42, 43 and 44. No filing requirements. No residual authority clause.
Strata owned TES	G-120-14	Exemption from Part 3, except s.42, 43 and 44. No filing requirements. No residual authority clause.
Stream A TES	G-121-14	Exemption from 44.1, 45 and 59-61. Residual authority clause. Registration requirement.
VREC	G-7-15	Exemption from Part 3 and s.71. Residual authority clause. Direction for safe and proper operations. No filing requirements.
Bakerview	G-71-16	Exemption from Part 3, except s. 25, 38, 42, 43 (not

<sup>88</sup> The purpose of this direction is not entirely clear. The wording is very similar to, but not exactly the same as, the wording of s.38.

EcoDairy		43(1)(b)(ii), 44, and 49. Annual report required.
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It can be observed that where the Commission exempts a public utility from economic regulation it retains authority to allow it to determine in the future whether the requirements for exemption have been met in a particular case. In a few instances, the Commission has also added directions or requirements for registration or an annual report.

**4.7.8 BCSEA-SCBC Comments on the Various Exemption Provisions**

In Table 3, below, BCSEA-SCBC set out their comments on the appropriateness, for Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility), of the exemption provisions used in the selected examples.

The conclusion is that BCSEA-SCBC recommend that Public Utilities Providing EVCS (not otherwise an actively regulated public utility) be subject to exemption from Part 3 except s.42, 43 (not 43(1)(b)(i), and 44, with no residual authority clause, directions, registration requirement or annual report requirement.

<b>Table 3. BCSEA-SCBC comments on exemption provisions for Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility)</b>	
<b>Provision</b>	<b>Public Utilities Providing EVCS (not BC Hydro or FBC or another actively regulated public utility)</b>
Exemption from Part 3	Suitable.
s.71	Not applicable.
Residual authority clause	Not necessary if s.42, 43 and 44 are excepted.
s.25 – Commission may order improved service by public utility	Not desirable. Objective met better by competition. Would discourage providing EVCS.
s.38 – Public utility must provide service	Not desirable. Objective met better by competition. Would discourage providing EVCS.
s.42 – Public utility’s duty to obey orders of the Commission	Suitable.
s.43 – Public utility’s duty to provide information at the Commission’s request (not including s.43(1)(ii) re DSM)	Suitable.
s.44 – Public utility’s duty to keep records required by the Commission	Suitable.
s.49 – Commission may order public utility to keep and provide accounts and reports	Not desirable. Would discourage providing EVCS. Objective met by exception of s.42.
Safe operations direction	Not desirable. Objective met better by competition and other regulatory

	authorities. Would discourage providing EVCS.
Registration requirement	Not desirable. Would discourage providing EVCS. Could be administratively onerous for Commission and entities required to register.
Annual report requirement	Not desirable. Would discourage providing EVCS. Could be administratively onerous for Commission and entities required to register.
<b>BCSEA-SCBC recommendation</b>	<b>Exemption from Part 3 except s.42, 43 (not 43(1)(b)(i)), and 44. No residual authority clause, directions, registration requirement or annual report requirement.</b>

#### 4.7.9 Single “Class of Cases”

BCSEA-SCBC submit that there should be a single “class of cases” including all entities providing EV charging services that in doing so are public utilities and that are not otherwise actively regulated public utilities. For greater certainty, the class of cases should include the Tesla Supercharger Network, and EV charging services to Strata Owners in parking facilities owned by a Strata Corporation. Attempting to customize the degree of the exemption according to factors such as charging level or location would likely be ineffective and impractical.

#### 4.8 EVCS by an inactively regulated public utility

This subsection addresses the situation in which an entity is a public utility by virtue of providing EV charging service and it is also an inactively regulated public utility for some other reason. A public utility that has an exemption under s.22 or s.88(3) cannot be described as “not otherwise a public utility.” Examples include Independent Power Producers, and providers of Micro TES, Strata owned TES, or Stream A TES.

As discussed in subsection 4.7.2, above, this scenario was addressed by the Biogas and Biomethane Suppliers Exemption Inquiry Panel. It determined that the exemption from Part 3 that it proposed for biogas and biomethane suppliers that are “not otherwise a public utility” should extend to biogas and biomethane suppliers that are otherwise an inactively regulated public utility. The same reasoning applies to the EV charging situation.

Accordingly, BCSEA-SCBC recommend that the class of cases for the proposed UCA Part 3 exemption apply to “a public utility providing EV charging service that is not otherwise a public utility subject to the rate provisions of the UCA.”

## **5.0 EV charging services by BC Hydro and FBC**

This section addresses 3, 4(b) and 5(b).

### **5.1 Scope and Summary**

This section focuses on EV charging services by BC Hydro and FBC. EV charging services by actively regulated public utilities other than BC Hydro and FBC are addressed in section 6, below. EV charging services by inactively regulated public utilities are addressed in section 4.8, above.

Key points:

1. It is in the public interest under the UCA, and in furtherance of the B.C. energy objectives under the CEA, for the Commission to allow BC Hydro and FBC to provide, and to recover their costs of providing, public EV charging services, particularly DCFC services, to serve and foster the development of the EV sector in B.C.
2. The Commission should take a flexible approach to BC Hydro's and FBC's EVCS rates and rate design to keep the rates low enough initially to foster demand for the service. EVCS projects or programs that may be proposed by BC Hydro or FBC should be examined by the Commission on their own merits.
3. A BC Hydro or FBC program to provide EV charging service would be a prescribed electrification undertaking if it meets the criteria set out in s.4 of the GGRR. However, the existence of the mechanism should not be seen as barring BC Hydro or FBC from recovering their costs of providing EV charging service in the usual manner that they recover their costs of service.

### **5.2 Public interest and B.C. energy objectives**

BCSEA-SCBC submit that the Inquiry Panel should find that it is in the public interest under the UCA and in furtherance of the B.C. energy objectives under the CEA for BC Hydro and FBC to take active roles in expanding the availability of publicly accessible EV charging services within their respective service territories in order to reduce GHG emissions in B.C. by facilitating the rapid development of the EV sector in B.C.

The Inquiry has received persuasive evidence that many additional new EV charging stations, particularly public DCFC stations, must be established in strategic locations in order to 'kick-start' the widespread adoption of EVs in the Province. The market is not yet sufficiently developed for the private sector to be able to fully meet this need. BC Hydro and FBC are uniquely suited to being leading early entrants into the market where EV charging services are lacking. BC Hydro and FBC have the expertise, resources, and motivation to develop public DCFC services where the private sector is unable to do so.

In time, the EV sector in B.C. will be large enough to support a mature competitive marketplace for public EV charging services. When that time comes, BCSEA-SCBC expect that the Commission will re-evaluate the optimal roles of BC Hydro and FBC. In the meantime, there is a crucial need for active involvement by BC Hydro and FBC in creating a network of DCFC stations that will expand the effective range of EVs in the Province and mitigate the 'range anxiety' that impedes growth of the EV sector.

BCSEA-SCBC also submit that for the Commission's acceptance of the role of BC Hydro and FBC in providing DCFC services to be meaningful it must include recognition that the utilities are entitled in principle to recover their costs of these services, subject to the

usual scrutiny of utility spending. BCSEA-SCBC agree with BC Hydro that “public utilities should be able to recover costs on the basis that installing fast charging stations will remove a key barrier to EV adoption and will deliver benefits to all ratepayers, including lowering greenhouse gases and increasing utility revenue through additional electricity sales.”<sup>89</sup>

Similarly, BCSEA-SCBC agree with Greenlots that:

“[F]or higher-powered chargers in metro areas or key transportation corridors...unfortunately a sustainable, competitive market is aspirational, and is unlikely to arise prior to the adoption of a critical mass of electric vehicles. ... Importantly, this is the specific category that drivers and studies consistently cite as being the primary barrier to EV adoption. This particular market state, which can only be described as a market failure, is a classic situation warranting public investment and the involvement of regulated monopolies.”<sup>90</sup>

And, BCSEA-SCBC agree with AddÉnergie that:

“The economic barriers faced by DCFC and MURB charging operators and economic and regulatory barriers faced by curbside charging operators are likely to inhibit adoption of EVs by many British Columbians, who seek a comprehensive provincial EV charging network, which in turn is likely reduce the demand for public charging, creating a classic “chicken and egg” barrier to achieving the province of British Columbia's vehicle electrification and clean transportation objectives.

Allowing utilities to ratebase charging infrastructure is an appropriate response to this barrier so long as it create a comprehensive and robust charging network that achieves quality standards.”<sup>91</sup>

In short, BCSEA-SCBC submit that it is in the public interest under the UCA for the Commission to allow BC Hydro and FBC to provide, and to recover their costs of providing, public EV charging services, particularly DCFC services, to serve and foster the development of the EV sector in B.C.

### **5.3 BC Hydro and FBC EVCS rates and rate design**

BCSEA-SCBC recommend that the Inquiry Panel endorse the Commission taking a flexible approach to BC Hydro's and FBC's EVCS rates and rate design to keep the rates low enough initially to foster demand for the service. The practicality of this approach follows from the very fact that in the near term providing public EV charging services is not profitable on a full cost recovery basis.

Beyond that high-level guideline, BCSEA-SCBC recommend that the Inquiry Panel determine that the Commission will handle EVCS rates and rate design issues based on specific applications by BC Hydro or FBC for specific approvals.

For example, the topic of pricing or valuing the supply of electricity to a BC Hydro or FBC DCFC station for the purpose of determining acceptable rates for EV charging service is one that BCSEA-SCBC believe should be determined in specific rates approval proceedings. BC Hydro and FBC appear to have different approaches to the

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<sup>89</sup> Exhibit C1-2, p.19.

<sup>90</sup> Exhibit C15-2, p.2.

<sup>91</sup> Exhibit C20-2, pp.2-3.

pricing/valuation of the electricity supplied to their DCFC stations, and the differences may reflect differences in their respective situations.

Regarding pricing to the EV driver, BCSEA-SCBC believe that the Commission should not attempt to select a preferred pricing model within this Inquiry. EV charging services are amendable to a wide variety of potential pricing models, in addition to the typical energy based (per kWh) or time based (per minute) rates. Other models include combinations of types of pricing and bundling with other services as disparate as parking and net metering.

In addition, EV drivers differ considerably in the form of pricing model that best suits their own situation. This may also differ in terms of Level 1, Level 2, Level 3 and potentially Level 4 charging equipment. And, an EV driver's preferred pricing model may well differ depending on, for example, whether a charging session is a 'top-up' or a 'home base' situation.

More broadly, it is not the case that EV charging service provides only electrical energy, measurable in kWh, to the customer. EV charging service also provides the customer with the use of the 'make-ready' infrastructure, the charging equipment, the space to park the vehicle, and payment services. All these components of the EV charging service, including the electrical power, come at a cost. In principle, it is appropriate for all of these costs of service to be recovered through the pricing model (or some other transparent mechanism). This means that while a per kWh pricing model may be perfectly appropriate in a given situation, other models, such time-based pricing, may be appropriate in other situations.

#### **5.4 Electrification Prescribed Undertaking Mechanism**

Section 18 of the CEA and s.4 of the Greenhouse Gas Reduction Regulation provide a mechanism for a public utility such as BC Hydro or FBC to recover certain costs of prescribed undertakings aimed at reducing GHG emissions through electrification.

The mechanism, briefly, is as follows:

- CEA s.18(1) defines "prescribed undertaking" as a project, program, contract or expenditure within a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing GHG emissions in B.C.
- CEA s.18(2) requires the Commission to set rates that allow a public utility to recover its cost of carrying out a prescribed undertaking. CEA s.18(3) prohibits the Commission from preventing a public utility from carrying out a prescribed undertaking.
- The GGRR is adopted pursuant to CEA s.35(n), which authorizes the LGIC to make regulations prescribing classes of projects, programs, contracts or expenditures.
- GGRR s.4 defines several classes of prescribed undertakings aimed at using electricity instead of other sources of energy that produce more GHG emissions. The classes of prescribed undertakings include programs of education, awareness, advice and incentives regarding the use of electricity, the supply of electricity equipment and energy systems in buildings, the development of technology, standards-making, and the spending of up to \$20 million on plant or system to meet the public utility's incremental load-serving obligations due to a prescribed undertaking.



The use of EVs instead of fossil-fuel vehicles certainly falls within the objective of using electricity instead of other sources of energy that produce more GHG emissions. However, the classes of prescribed undertakings are defined quite specifically and it is not entirely clear whether and how providing EV charging services would fit the detailed criteria.

In BCSEA-SCBC's view, it would be up to BC Hydro or FBC to make the case that a particular undertaking involving EV charging service is a GGRR s.4 prescribed undertaking. Neither has done so to date.

FBC, in its rates application for five DCFC stations in the Highway 3 corridor,<sup>92</sup> argues that its EV charging initiative "is consistent with," and "in support of," government policy contained in the GGRR, the CEA and climate action objectives.<sup>93</sup> However, it does not appear that FBC is asking the Commission to determine that the DCFC initiative is a prescribed undertaking under s.4 of the GGRR.

Exhibit A-35 invites submissions on the electrification prescribed undertaking mechanism and its relationship to EV charging services by BC Hydro and FBC. BCSEA-SCBC's view is that a public utility's project or program to do with EV charging service would be a prescribed electrification undertaking if it meets the criteria set out in s.4 of the GGRR. However, this would have to be determined by the Commission on the facts of a specific undertaking presented by BC Hydro or FBC.

Importantly, the prescribed undertaking mechanism is not the only way for BC Hydro or FBC to recover their costs of EV charging service. The existence of the mechanism under CEA s.18 and GGRR s.4 does not bar BC Hydro or FBC, respectively, from recovering their costs of providing EV charging service in the usual manner that they recover their costs of service.

## **6.0 EVCS by Actively Regulated Public Utilities other than BC Hydro or FBC**

This section is included for completeness. Previous sections have addressed EV charging services by entities that are not public utilities at all (e.g. not for compensation, or excluded from "public utility"), by entities that are public utilities due to providing EVCS and that are not actively regulated public utilities (BCSEA-SCBC recommends exemption), and by BC Hydro and FBC (Section 5.0). The category that has not been addressed to this point is: EV charging services by entities that are actively regulated public utilities other than BC Hydro and FBC.

Actively regulated public utilities other than BC Hydro and FBC include: FortisBC Energy Inc. (natural gas), Pacific Northern Gas (natural gas), Creative Energy (thermal energy), Corix Multi-Utility Services Inc. regarding certain services, and FortisBC Alternative Energy Services (thermal energy).<sup>94</sup>

Exhibit A-35 invites input on certain topics to do with "public utilities such as BC Hydro and FBC." In BCSEA-SCBC's view it is important that the Inquiry Panel address BC

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<sup>92</sup> FortisBC Inc. Rate Design and Rates for EV DCFC Service Application ~ Project No.1598940, <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=611>. The application was filed on December 22, 2017. The Commission has approved interim rates for DCFC service, and the proceeding is currently suspended.

<sup>93</sup> FBC EV DCFC Service Application, Exhibit B-1, p.ES-1. Also, in the current proceeding: Exhibit C12-2, p.10.

<sup>94</sup> While ICBC's compulsory insurance is regulated by the BCUC, section 44(2) of the *Insurance Corporation Act* provides that ICBC is not a public utility.

Hydro and FBC separately from other actively regulated public utilities (and separately from inactively regulated public utilities), for the following reasons:

- BC Hydro and FBC are the only actively regulated public utilities that are already involved in providing EV charging services, to BCSEA-SCBC's knowledge.
- No other actively regulated public utility has expressed a current intention to become involved in providing EV charging services, again, to BCSEA-SCBC's knowledge.
- In any event, BC Hydro and FBC have provided considerable evidence, directly and in response to information requests, regarding their EVCS activities, plans and views.
- There is little or no evidence on the record regarding EVCS by actively regulated public utilities other than BC Hydro and FBC.
- BC Hydro and FBC are the providers of electricity to their own EV charging stations, whereas another actively regulated public utility is not likely to provide electricity to its own EV charging station.

EV charging service by actively regulated public utilities other than BC Hydro and FBC does not automatically warrant the same regulatory approach as EV charging service by public utilities that are not otherwise public utilities and EV charging service by inactively regulated public utilities. This is because with EVCS by actively regulated public utilities there is a theoretical possibility of cross-subsidization from (or to) other customers of regulated service. Having said that, it is difficult to predict whether in a specific case the possibility of cross-subsidization would be sufficient to warrant different regulatory treatment.

BCSEA-SCBC recommend that the Inquiry panel adopt the following approaches for the regulatory treatment of EV charging services by actively regulated public utilities other than BC Hydro and FBC:

1. The provision of public EV charging services by actively regulated public utilities other than BC Hydro and FBC should be encouraged, not discouraged.
2. The regulatory treatment of EV charging services by actively regulated public utilities other than BC Hydro and FBC should be the same as the minimal regulatory treatment of EV charging services by public utilities that are not otherwise a public utility, except to the extent required by the fact that the subject public utility provides another service that is actively regulated.
3. The applicability of the prescribed undertaking mechanism (CEA s.18 and GRR s.4) to EV charging services by actively regulated public utilities other than BC Hydro and FBC should be left to be determined in a specific application.

## **7.0 Other Priority Issues for Phase One**

### **7.1 Public utility status of strata corporations providing EVCS to strata owners**

BCSEA-SCBC are aware that there is some degree of uncertainty<sup>95</sup> as to whether EV charging service within multiple unit residential buildings (MURBs) is a public utility. BCSEA-SCBC suggest that the MURB category is too broad for a single answer.<sup>96</sup>

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<sup>95</sup> The emphasis here is on uncertainty among sector participants, not legal uncertainty.

<sup>96</sup> For example, EVCS by a landlord to MURB tenants with leases less than five years in duration

However, there is one specific subcategory in which clarity could be usefully provided: EV charging service by, or arranged by, a strata corporation to strata owners within a strata-owned parking facility (“Strata EVCS”).

### **7.1.1 Strata EVCS**

BCSEA-SCBC’s understanding is that Strata EVCS is indeed within the definition of public utility. In reaching that conclusion, they considered the following:

- A strata corporation providing EVCS to strata owners is not providing EVCS to itself. The strata corporation is a different legal entity than the strata owners.
- A strata corporation providing EVCS to strata owners is not a landlord providing EVCS to its tenant. Strata owners are not tenants of the strata corporation.
- A strata corporation providing EVCS to strata owners is providing EVCS “to or for the public.” The term “to or for the public” in the definition of “public utility” is not limited to situations where any member of the public is welcome to use the service.<sup>97</sup> The Commission’s 2014 decision regarding Superior Propane addresses this point legally. For convenience, this decision is discussed in detail in the next subsection.
- In most cases, the strata owner would pay for the charging service, either to the strata corporation or to an EVCS provider, and so this would be clearly “for compensation.”
- Even in the perhaps unlikely scenario in which a strata corporation provides EVCS to strata owners nominally without charge, the EVCS would be provided “for compensation” in that the strata owners pay service and maintenance fees to the corporation.<sup>98</sup>
- A strata corporation providing thermal energy service to strata owners is recognized by the Commission as a public utility.

### **7.1.2 Superior Propane, Order G-91-14, July 10, 2014**

In Decision and Order G-91-14, the Commission found that Superior Propane was operating as a public utility in providing propane service to strata owners in a strata property. The Commission Panel rejected Superior Propane’s argument that no member of the public may purchase propane from Superior Propane at the subject locations. The Commission Panel explains the broad meaning of “the public” in the definition of public utility as follows:

“Superior Propane has submitted that its sales and services to the owners at Seascapes are not a supply to “the public” for purposes of clause (a) of the definition of “public utility” in the UCA.

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would be excluded from the definition of public utility.

<sup>97</sup> For example, BC Hydro provides electricity “to or for the public” when it provides electricity to a customer who is the resident of certain premises, even though only the customer is allowed to use the electricity.

<sup>98</sup> This is different than the Freer EV Charging for Customers scenario, because in that scenario the EV driver is under no obligation to purchase anything from the provider of the EVCS.

In order to meet the definition of “public utility” in clause (a), Superior Propane must be supplying the gaseous propane to “the public or a corporation for compensation.”

“The five exclusions listed in the definition of “public utility” help to shed light on the intended scope of the word “public.” In (d), the exclusion of a person who provides service only to themselves, their employees or their tenants (which does not include a lessee for a term of more than 5 years), supports the inference that providing a supply or service to others (i.e. persons who are not employees or tenants) is providing to the public.

In *TransCanada Pipeline Ventures Ltd. v. Alberta (Energy and Utilities Board)*, 2008 ABCA 55, 299 D.L.R (4<sup>th</sup>) 558, the Alberta Energy and Utilities Board ruling that was under appeal held that the term “public” is intended to be interpreted broadly, and that a customer should not lose its status as a member of the public simply by entering into a private contract. The Alberta Court of Appeal upheld that ruling, reasoning at paragraph 37 that although “the definition would not include someone transporting its own gas in its own pipeline for its own use, ... the definition would cover just about everyone else.”

Based on the provisions of the UCA, the jurisprudence on “the public”, the public policy underlying utilities regulation, and the submissions and evidence before it, the Commission finds that “the public” includes persons who have signed an agreement for service from Superior Propane at Seascapes, including any future purchasers of units at Seascapes who would be required to sign new, or take over existing, service contracts.<sup>99</sup>

### 7.1.3 Conclusion re Strata EVCS

BCSEA-SCBC encourage the Inquiry Panel to discuss and clarify whether EV charging service by, or arranged by, a strata corporation to strata owners within a strata-owned parking facility is within the definition of public utility.

To be clear, if the Panel finds that Strata EVCS is a public utility, then Strata EVCS would be within the category of ‘EV charging service by a public utility that is not otherwise a public utility’ that BCSEA-SCBC recommend be exempted from Part 3 of the UCA. While it could be said that ‘it doesn’t make much real difference’ whether the Strata EVCS is (a) not a public utility or (b) minimally regulated, the lack of clarity, or perceived lack of clarity, adds to the barriers to the adoption of EV charging service by strata corporations.

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<sup>99</sup> Decision and Order G-91-14, <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119540/index.do>. Order G-91-14 was set aside on other grounds: Order G-11-15, <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/119540/index.do>.

## **8.0 Conclusion**

BCSEA-SCBC appreciate this opportunity to contribute to the Inquiry Panel's deliberations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 1, 2018



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