



August 1, 2018

VIA E-FILING

Patrick Wruck
Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3

Reply to: Leigha Worth
lworth@bcpiac.com
Ph: 604-687-3034

Dear Mr. Wruck:

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

I am counsel for the BC Old Age Pensioners' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, Tenant Resource and Advisory Centre, and Together Against Poverty Society, known collectively in regulatory processes as "BCOAPO et al." The constituent groups of BCOAPO et al. represent the interests of low and fixed income energy consumers within BC and more specifically in this process, the interests of BC's low and fixed income electrical residential ratepayers and drivers who may be impacted by a decision regarding the regulation of electric vehicle charging stations.

INTRODUCTION

On January 12, 2018, the British Columbia Utilities Commission (BCUC) initiated an inquiry into the regulation of electric vehicle charging service pursuant to section 82 of the *Utilities Commission Act* ("the *UCA*"). The BCUC established a regulatory process that initially provided for a series of community input sessions, the formal registration of interested parties as intervenors, the provision of intervenor evidence and one round of interrogatories regarding the intervenor evidence.

Not surprisingly given the high value British Columbians place on the environment and the corresponding interest in alternatives to polluting technologies, a large number formally intervened including BC's regulated electric utilities, parties representing the

regulated electric utilities' ratepayers, various levels of government, parties involved with the installation of EV charging stations, sellers of electric vehicles, parties who currently provide EV charging services under various arrangements, manufacturers of electric vehicles, parties who currently own electric vehicles and require charging services, various public interest groups and other interested parties. Many of these parties filed evidence and responded to interrogatories.

A Procedural Conference was held on June 27, 2018, to address various procedural issues including the next steps in process. On July 4, 2018 the BCUC issued Order G-119-18 wherein it determined¹ that a "phased approach" was appropriate and that in the first phase the Commission would address the following issues²:

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

Parties were invited to provide submissions on these three Phase One issues by August 1, 2018.

COMMENTS ON PHASE ONE ISSUES

¹ Appendix A, page 6

² Appendix A, page 7

The legal interpretation regarding the “for compensation” wording within the definition of a public utility under the UCA.

The Utilities Commission Act (UCA) provides the following definition for a public utility³:

"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) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

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

The Utilities Commission Act also provides the following definition for “compensation”:

³ Definitions Section, UCA

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

The Commission has requested comment (legal interpretation) as to whether the words "for compensation" in the definition of public utility mean that a person who does not expressly require customers to pay for charging services but instead recovers the cost of charging from other services provided to the customers is a "public utility".

BC Hydro suggests⁴ that entities that decide, as a business, to offer free public EV charging service to their customers can do so without falling into the definition of a "public utility". Indeed, the BCUC in Order G-71-16, relating to the Bakerview EcoDairy Ltd. (EcoDairy) application for an exemption to Part 3 of the UCA for EV charging service providers, stated⁵ that the application arose as a result of EcoDairy's decision to start charging for its EV charging service. In its evidence, FortisBC referenced⁶ the EcoDairy decision by the BCUC and noted that "the primary option for private parties, if they do not wish to fall under the UCA public utility definition, is to offer EV charging service to the public free of charge". It is also noted that the Ministry of Energy, Mines and Petroleum Resources appears to take a similar view⁷.

However, a strict reading to the definition of compensation would suggest that the answer is yes in that compensation (as defined under the UCA) includes "a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly" (emphasis added) and in many situations⁸ the person providing the charging service is expecting to be compensated "indirectly" through increased sales of other products and services. The only exceptions being those instances where:

⁴ Exhibit C1-2, page 3

⁵ Appendix A, pages 2-3

⁶ Exhibit C12-2, page 9

⁷ Exhibit C19-2, page 6

⁸ For example, retail stores, restaurants and hotels where parking is provided expressly for "customers".

- The charging service is provided by the municipality or regional district within its own boundaries (per part (c) of the UCA's definition of a public utility), and
- The charging service is provided to the person's employees or tenants and the service is not resold to or used by others (per part (d) of the definition of a public utility).

With respect to these “exceptions” it is noted that while municipalities and regional districts are included the definition does not include either the province or the federal government. This would suggest that, based on a strict interpretation, charging services offered by these levels of government would be included under the definition of a “public utility” if the charging service was offered in order to facilitate the purchase of other services. In these circumstances, BCOAPO submits that such compensation could be considered “indirect”.

The definition for “tenant” is as defined the *Residential Tenancy Act* and the *Commercial Tenancy Act*⁹. Based on the *Residential Tenancy Act*, it is clear that residential rental units fall under this definition. However, it does appear that the definition of tenant extends to:

- i. Parties renting hotel or other short-term accommodation – as these are explicitly excluded from the Residential Tenancy Act¹⁰, or
- ii. Parties utilizing parking offered by retail outlets (including restaurants) where the parking spaces are provided expressly for use of by “customers”.

Also, UDI¹¹ has raised the issue of whether or not the definition of “tenant” extends to strata owners in strata corporations. Because a question of interpretation of this specific and specialized nature this does go beyond the scope of the question posed by the Commission, BCOAPO will not offer comment on the scope of whether strata's are or are not covered by the tenancy exception except to note that this may be an issue to be discussed in future.

⁹ Clean Energy Act, section 17.1

¹⁰ See Section 4

¹¹ Exhibit C9-6, Response to BCOAPO IR #1.1

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

In order to facilitate interveners' submissions, the Commission has invited interveners to provide arguments on the following straw man regulatory framework:

- Entities not otherwise public utilities will, with respect to the provision of electric vehicle charging services, be exempt from Part 3 of the UCA except for sections 25, 26, 38, 42, 43¹², 44, and 49. Entities that are otherwise public utilities may apply for BCUC approval to provide regulated EV charging services.

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

It is noted that Order G-71-16 did not include section 26¹³ of the *UCA* in those sections to which EcoDairy would not be exempt. The other sections, for which exemption is not provided under either Order G-71-16 or the current straw man regulatory framework, deal with matters such as:

¹² Excluding 43(1)(b)(ii) where a public utility must provide to the BCUC an annual report regarding demand-side measures.

¹³ Section 26 provides that "After a hearing held on the commission's own motion or on complaint, the commission may do one or more of the following:

- (a) determine and set just and reasonable standards, classifications, rules, practices or service to be used by a public utility;
- (b) determine and set adequate and reasonable standards for measuring quantity, quality, pressure, initial voltage or other conditions of supplying service;
- (c) prescribe reasonable regulations for examining, testing or measuring a service;
- (d) establish or approve reasonable standards for accuracy of meters and other measurement appliances;
- (e) provide for the examination and testing of appliances used to measure a service of a utility"

- The provision of a reasonable, safe, adequate and fair service (sections 25 and 38),
- Obeying orders issued by the Commission (section 42)
- Answer questions and provide information requested by the Commission (sections 43 and 49)
- Keep accounts and records as required by the Commission (section 44 and 49)

A number of parties commented on the question of whether EV Charging Stations should be regulated by the BCUC. In general, the comments were that parties only providing EV charging services should either not be regulated or, if regulated, oversight should be on a light-handed basis. Such positions were taken by both parties representing EV owners¹⁴ and those representing the interests of EV charging station owners/operators¹⁵ as well as other parties¹⁶.

In BCOAPO's view EV charging services should eventually evolve into a competitive market. However, the market for EV charging service offerings by parties who are otherwise not public utilities is currently not fully competitive. This is due to the limited availability of EV charging stations (particularly in non-urban areas) – which in turn is due to the current low market penetration of electric vehicles. Given this context, it is BCOAPO's view that some form of regulatory oversight is required – particularly in the near term. However, it is our view that this oversight to protect the public from the dangers of a market where true competition is so far absent should not be so intrusive or heavy-handed so as to discourage new participants. Also, this oversight should also be designed in such a way that the BCUC can take an increasingly light-handed approach if and when the market becomes more competitive but also allow it to intervene if and as necessary.

¹⁴ Guthrie (page 4 and BCUC IR #1.1 & #2.2 & #4.3); Vancouver Electric Vehicle Association (pages 6-7); Victoria Electric Vehicle Club (page 3)

¹⁵ Drive Energy Inc. (pages 2-3); Greenlots (page 3); Autochargers (page 1); AddEnergie (page 6); ChargePoint (pages 4, 9 and 19)

¹⁶ City of Vancouver (pages 12-13); BCSEA (pages 6 & 11); FBC (page 14 and BCOAPO IR #1.1); Ministry of Energy, Mines and Petroleum Resources (page 10 and ChargePoint IR #2.3); CEC (page 38 and BCUC IR #2.1); BC Hydro (BCOAPO IR #1.1.1);

In BCOAPO's view the straw man put forward by the BCUC offers such a framework. Furthermore, BCOAPO supports the straw man proposal to not exempt EV charging service providers (who are not otherwise public utilities) from section 26 of the Act.

However, in BCOAPO's view the regulatory framework should include the following:

- i. There should be no provision for exemption from section 39 of the UCA which requires that "On reasonable notice, a public utility must provide suitable service without undue discrimination or undue delay to all persons who: (a) apply for service, (b) are reasonably entitled to it, and (c) pay or agree to pay the rates established for that service under this Act.". In BCOAPO's view, this provision of the Act is particularly important under the current circumstances where the number of EV Charging Stations is limited. As noted by BC Hydro¹⁷ – "The Commission's jurisdiction to set the terms and conditions of EV charging service is broad enough to require that any EV is able to charge at any EV charging station, where the latter is used by a public utility to provide service". In its interrogatory responses¹⁸ FortisBC also notes the applicability of section 39.
- ii. Similar to Order G-71-16, parties offering EV charging services should be required to provide an Annual Report to the Commission by February 15 each year similar to that set out in Appendix B of the Order. However, in addition to the information set out in Appendix B, parties should be required to report the frequency and duration of outages that occurred during the year in order to the BCUC to monitor service reliability¹⁹. The Commission should also consider requiring the Annual Report to include other metrics related to service quality. Useful suggestions in this regard were set out in BC Hydro's and FortisBC's interrogatory responses²⁰.
- iii. The Commission should make it clear that while price is not directly subject to regulation, unreasonable or discriminatory pricing are matters that will be dealt in

¹⁷ Exhibit C1-4, Response to BCUC IR #1.4.5.2

¹⁸ Exhibit C12-3, Response to BCUC 6.5

¹⁹ Exhibit C1-4, Response to BCUC IR #1.4.2 and Exhibit C12-3, Response to BCUC IR #6.2

²⁰ Exhibit C1-4, Response to BCUC #1.4.1 and Exhibit C12-3, Response to BCUC IR #6.1

response to complaints with under section 25 of the Act and may lead to individual parties losing their exemptions to those sections of the Act dealing with the setting of rates.

- iv. Pursuant to section 117 of the UCA, parties may be required to pay fees to the Commission in the amounts that the Commission determines in order to defray costs associated with the oversight of the sector. One way of assigning such costs would be in proportion to the annual energy dispensed as reported to the Commission in the Annual Report required under section 49 (see item (ii) above).

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 GGRR

Section 18 of the Clean Energy Act states:

- (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.*
- (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 4 of the Greenhouse Gas Reduction Regulation (GGRR) deals with prescribed electrification undertakings under section 18 of the Clean Energy Act and states:

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

(2) *A public utility's undertaking that is in a class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:*

(a) for the purpose of reducing greenhouse gas emissions in British Columbia, the public utility constructs or operates an electricity transmission or distribution facility, or provides for temporary generation until the completion of the construction of the facility, in northeast British Columbia primarily to provide electricity from the authority to

- (i) a producer, as defined in section 1 (1) of the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation, B.C. Reg. 495/92, or
 - (ii) an owner or operator of a natural gas processing plant;
- (b) the public utility reasonably expects, on the date the public utility decides to carry out the undertaking, that the facility will have an in-service date no later than December 31, 2022.
- (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.

In BCAOPO's view the provision of EV charging services by BC Hydro or FortisBC clearly does not fall under section 4 (2) of the GGRR as it deals with the provision of electricity to producer and natural gas processing plant owners/operators.

With respect to section 4 (3) of the GGRR, while the provision of EV Charging Stations does encourage use electricity instead of other sources of energy that produce more greenhouse gas emissions in BCOAPO's view section 4 (3) (a) does not apply as such encouragement is not being provided 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. Nor does section 4 (3) (b) apply as such encouragement is not being provided 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;

In BCOAPO's view section 4 (3) (c) could allow for investments by FortisBC or BC Hydro in EV charging stations but only if such investments were done as a "pilot project". There is no clear definition in the GRCC as to what is considered a "pilot project". However, in BCOAPO's view a pilot project is one that is meant to provide insight on specific issues and is limited in duration (based on the time required to reasonably gather the information being sought). Furthermore, in accordance with section 4 (4) the pilot project would have to be demonstrated as "cost effective". Moreover, in accordance with section 18 (2) of the *Clean Energy Act* "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". While section 18 (2) of the *Clean Energy Act* does not explicitly state "who" the costs should be recovered from (i.e., whether it should be the EV charging station users or electric ratepayers), the GGRR requirement that the project be "cost effective" would suggest that the costs (including lost export revenues) would be recovered from the EV charging station users.

Section 4 (3) (d) also does not seem to apply as investments in EV charging stations cannot be considered as “supporting a standards-making body in its development of standards”.

And Finally, section 4 (3) (e) does not apply as investments in EV charging stations cannot be considered as “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)”.

Based on the foregoing assessment, BCOAPO submits that BC Hydro and FortisBC are permitted to invest in EV charging stations as a prescribed undertaking under section 18 of the Clean Energy Act and section 4 of the GGRR only under very specific circumstances (i.e., when associated with a pilot project related to EV charging station technology) and, then, only under circumstances where the project is cost effective and rates are designed to cover costs on an annual basis. BCOAPO also notes that in response to interrogatories²¹ the Ministry of Energy, Mines and Petroleum Resources has indicated that a change in regulations would be required to allow utilities (i.e., BC Hydro and FortisBC) to recover EV charging infrastructure investment from ratepayers.

BCOAPO acknowledges that there currently exists what could be characterized as a “chicken and egg” problem with respect to EV adoption and the availability of EV charging stations (particularly Direct Current Fast Charging stations). There is lack of electric vehicle penetration due to lack of EV charging stations and, correspondingly, a lack of EV charging stations (particularly DCFC stations) due to the high investment costs and lack of customers (i.e., electric vehicles). As a result, there is a potential role for public utilities (e.g., BC Hydro and FortisBC) to play a role in “kick-starting” the market for EV charging services as suggested by the Ministry of Energy, Mines and Petroleum Resources²² and FortisBC²³.

²¹ Exhibit C19-5, Response to BCUC IR #4.3

²² Exhibit C19-8, Response to ChargePoint IR #2.2

²³ Exhibit C12-3, Response to BCOAPO #2.1 & 2.2.2

However, BCOAPO respectfully disagrees with BC Hydro's view²⁴ that there are no "disadvantages" to public utility involvement in the EV charging market place. If the rates charged by public utilities for EV charging services are less than the rates that private entities will be required to charge in order to enter and then operate in the market then the involvement of public utilities could actually create an additional barrier to the development of a competitive market. Furthermore, this could occur even if the EV charging rates offered by FortisBC and/or BC Hydro are based on full cost recovery, as the cost capital for public utilities is likely to be less than the cost of capital for private entities²⁵. This problem would be magnified if the EV charging rates set for public utilities were less than costs (i.e., subsidized by ratepayers). To address this issue it will be important that, if public utilities become involved in providing EV charging services as part of their "regulated business", the rate for the service be a market rate. In response to interrogatories BC Hydro²⁶ has acknowledged this point. BCOAPO also notes that CEC²⁷ appears to share its concerns in this regard.

It is also BCOAPO's view that, absent any specific directive from Government or statutory requirement, there should ideally be a ratepayer benefit from public utilities becoming involved in offering EV charging services and, at minimum, a requirement that there be no cross-subsidization. BCOAPO notes that this view is consistent with the GGRR requirement that prescribed undertakings be "cost-effective".

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

BC Public Interest Advocacy Centre

Original on file signed by:

Leigha Worth
Barrister & Solicitor
Executive Director

²⁴ Exhibit C1-4, Response to BCUC #1.2.1

²⁵ Exhibit C1-4, Response to BCOAPO IR #1.3.1

²⁶ Exhibit C1-4, Responses to BCUC IR #1.2.2 and BCOAPO IR #1.3.1.2

²⁷ Exhibit C24-18, Response to BCOAPO IR #4.1 & 4.2