

**Fred James**

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

[bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com)

August 22, 2018

Mr. Patrick Wruck  
Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: Project No. 1598941**  
**British Columbia Utilities Commission (BCUC or Commission)**  
**British Columbia Hydro and Power Authority (BC Hydro)**  
**BCUC Regulation of Electric Vehicle Charging Service Inquiry**  
**BC Hydro Reply Argument**

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BC Hydro writes to enclose its Reply Argument in this matter.

For further information, please contact Anthea Jubb at 604-623-3545 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



(for) Fred James  
Chief Regulatory Officer

aj/af

Enclosure

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

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**Reply Argument of  
British Columbia Hydro and Power Authority**

**August 22, 2018**

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1     **1           Introduction and Overview**

2     1.     This is BC Hydro's reply argument with respect to the first phase of the EV  
3           Inquiry.<sup>1</sup>

4     2.     On August 1, 2018, BC Hydro submitted its final argument in this proceeding  
5           along with the following 19 interveners:

- 6           •     the Clean Energy Association of British Columbia (**CEABC**);
- 7           •     Mr. D.J. Flintoff;
- 8           •     the City of Vancouver (**CoV**);
- 9           •     BC Sustainable Energy Association and Sierra Club BC (**BCSEA**);
- 10          •     Urban Development Institute (**UDI**);
- 11          •     FortisBC Inc. (**FBC**);
- 12          •     Vanport Sterilizers Inc. (**Vanport**);
- 13          •     Greenlots;
- 14          •     Mr. G.D. Guthrie;
- 15          •     British Columbia Ministry of Energy, Mines and Petroleum (**MEMPR**);
- 16          •     AddEnergie Technologies Inc. (**AddEnergie**);
- 17          •     BCOAPO et al.;
- 18          •     the Commercial Energy Consumers Association of British Columbia  
19                (**CEC**);
- 20          •     ChargePoint Inc. (**ChargePoint**);

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<sup>1</sup> In this reply argument, defined terms and acronyms have the same meaning as in BC Hydro's final argument (Exhibit C1-5), unless stated otherwise.



1 limited its reply argument in the same manner. However, BC Hydro notes that  
2 in the Intervener Arguments, various parties raised issues that, in its view,  
3 would be more appropriately addressed at a later stage. As such, this reply  
4 argument provides a summary response to some of those issues in Part VI  
5 below.<sup>6</sup>

6 5. For convenience, BC Hydro has organized this reply argument in the same  
7 manner as the submissions in its final argument – that is, it is organized by  
8 issue and not by intervener.

## 9 **2 Meaning of "For Compensation"**

10 6. In Order G-119-18, the Commission correctly states that “based on the UCA’s  
11 current wording, an owner or operator that provides EV charging service for  
12 compensation is by definition a public utility under the UCA.”<sup>7</sup> With the  
13 exception of two parties, Tesla and ChargePoint, all interveners appear to  
14 agree with this basic premise – that is, if an owner/operator provides EV  
15 charging services and charges a fee for that service, it is, by definition, a  
16 public utility pursuant to the UCA and thus (barring an exemption) subject to  
17 some level of regulation.

18 7. With respect to the arguments provided by Tesla and ChargePoint, both  
19 suggest that the UCA does not apply to EV charging services at all.<sup>8</sup>  
20 ChargePoint submits that EV charging services “do not reflect a *sale* of  
21 electricity, but instead provide a service that *uses* electricity”<sup>9</sup> and that the  
22 Commission should conclude it should not regulate EV service providers by

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<sup>6</sup> Where BC Hydro has not responded directly to an intervener submission, it should not be taken as agreement with that submission.

<sup>7</sup> Order G-119-18, Appendix A, pages 4 and 5.

<sup>8</sup> ChargePoint states that EV charging stations are not public utilities under the UCA, see ChargePoint final argument, page 6, Exhibit C25-10.

<sup>9</sup> ChargePoint final argument, page 4, Exhibit C25-10.

1 “purposively interpreting the public utility definition” to somehow ensure EV  
2 service providers are “not caught by it.”<sup>10</sup> For its part, Tesla argues that the  
3 Commission should not “deem EV charging services” as public utilities<sup>11</sup>  
4 because “an EV charging station does not literally perform any of the activities  
5 listed in the “public utility” definition in exchange for compensation.”<sup>12</sup> This  
6 aspect of Tesla’s argument appears to hinge on the fact that its customers  
7 pay for time at a parking spot and the EV charging aspect of the service is  
8 complimentary.<sup>13</sup> Both Tesla and ChargePoint’s arguments are misguided.  
9 First, any reasonable interpretation of the definition of “public utility” makes  
10 clear that an owner/operator providing EV charging services for compensation  
11 falls within the definition under the UCA. Second, “purposive interpretation”  
12 refers to the way in which an enactment should be interpreted, and not, as  
13 ChargePoint argues, a means to achieving a pre-determined outcome.  
14 Finally, it is important to confirm that contrary to Tesla’s submissions, the  
15 Commission did not enact the UCA and does not “deem” anything a public  
16 utility (or not). Rather, the Commission exercises a statutory obligation  
17 imposed on it by the legislature to interpret and apply the UCA. That is what  
18 the Commission has done in the present case, and in BC Hydro’s submission,  
19 it has done so thoughtfully and appropriately.

- 20 8. Where there is some disagreement amongst the interveners, BC Hydro  
21 submits that it is generally due to applying either an overly broad  
22 interpretation to the word compensation, failing to apply the necessary  
23 purposive analysis required or misconstruing the significance of the words  
24 “directly” and “indirectly”. BC Hydro will briefly address each below.

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<sup>10</sup> ChargePoint final argument, pages 4-5, Exhibit C25-10.

<sup>11</sup> Tesla final argument, page 1, Exhibit C28-6.

<sup>12</sup> Tesla final argument, page 4, Exhibit C28-6.

<sup>13</sup> Tesla final argument, pages 4-5, Exhibit C28-6.

- 1 9. While all interveners agree that the definition of “compensation” is broad,  
2 some contend that it is too unclear and imprecise or too elusive<sup>14</sup> to define  
3 and as such, an exemption order is justified.<sup>15</sup> While BC Hydro agrees the  
4 definition is broad, that is not a reason in and of itself to justify an exemption  
5 order. Rather, and to account for the possibility that no exemption order is  
6 forthcoming, the Commission has requested and can therefore provide,  
7 helpful guidance with respect to what the terms means and the scope of its  
8 regulation in this regard.<sup>16</sup>
- 9 10. As submitted by a number of interveners the question of the scope of what  
10 “for compensation” means requires the application of statutory interpretation  
11 principles.<sup>17</sup> Further, and as endorsed by the Commission<sup>18</sup>, it requires  
12 looking at both the plain and purposive meaning. BC Hydro submits that once  
13 one undertakes the necessary purposive analysis (and not simply a strict  
14 interpretation, as engaged in by BCOAPO<sup>19</sup>) it is clear that where the service  
15 is not conditional on the customer paying or doing anything that might benefit  
16 the service provider, there is no compensation. More plainly, and as  
17 submitted by BCSEA, “free EV charging for customers is not the sale of

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<sup>14</sup> VEVA final argument, page 5, Exhibit C30-8.

<sup>15</sup> See CEABC’s final argument which suggests that the solution for the ambiguity in the definition is “to provide an exemption from regulation under the UCA...”, page 2, Exhibit C2-2. See also VEVA’s final argument at page 5 which “urges the Commission to forego attempts to embark on an elusive and perhaps impossible pursuit of an ideal definition or legal interpretation...and instead recommend that EV charging stations be specifically exempted from application of that term in all applicable sections of the UCA.”

<sup>16</sup> Related to this, BC Hydro notes that on page 9 of Mr. Flintoff’s final argument, he submits that the definition of compensation should stand. There is no issue in this proceeding of amending the definition of compensation in the UCA – rather, and as stated, the Commission has requested guidance on what the term means. BC Hydro notes that at page 2 of its final argument the Victoria EV Club also provides comments with respect to amendments to the definition of “public utility” in the UCA which BC Hydro confirms is also not contemplated in this proceeding.

<sup>17</sup> See for example, BC Hydro’s final argument, pages 6-7, Exhibit C1-5; BCSEA’s final argument, section 3.2, Exhibit C6-14; and the FBC final argument, paragraph 12, Exhibit C12-4.

<sup>18</sup> In both the Commission’s decision regarding BC Hydro’s 2015 Rate Design Application and Order No. G-5-17, the Commission’s Alternative Services Inquiry Report and the SSL-Sustainable Service Ltd. decision and Order G-104-18.

<sup>19</sup> See BCOAPO’s final argument, at pages 4-5, which applies an exclusively “strict” interpretation to the term.

1 electricity to the public for compensation.”<sup>20</sup> As stated in BCSEA’s final  
2 argument, “this is an unambiguous conclusion based on the grammatical and  
3 ordinary sense of the words in the definitions of public utility and  
4 compensation” which is “reaffirmed and strengthened by reading the  
5 definitions of public utility and compensation harmoniously with the purpose of  
6 the Act to regulate natural monopolies and protect consumers from the  
7 exercise of market power.”<sup>21</sup> In other words, when the service is provided  
8 unconditionally, none of the issues that animate the public policy basis of  
9 utility regulation are engaged.<sup>22</sup>

10 11. Parties like the CEC, Mr. Flintoff and VEVA appear to disagree with this  
11 proposition. The CEC state that compensation includes the recovery of  
12 service costs “from other services provided to customers.”<sup>23</sup> Mr. Flintoff  
13 suggests something similar, that compensation includes the receipt of funds  
14 from sources other than the person receiving the service or from an increase  
15 in fees for other services.<sup>24</sup> Finally, VEVA’s argument relies on the same  
16 proposition but says that the use of the word “indirectly” in the definition  
17 bolsters the interpretation – that is, VEVA argues that “the mere absence of  
18 expressly requiring customers to pay for charging services will not alone be  
19 sufficient to avoid falling within the definition.”<sup>25</sup> If one were to accept these  
20 interpretations, both parking lot operators and café owners would be public  
21 utilities subject to regulation.<sup>26</sup>

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<sup>20</sup> BCSEA final argument, page 18, Exhibit C6-14.

<sup>21</sup> BCSEA final argument, page 18, Exhibit C6-14.

<sup>22</sup> BC Hydro final argument, paragraph 13, Exhibit C1-5.

<sup>23</sup> The CEC final argument, paragraph 11, Exhibit C24-19. The CEC fails to make the argument in support of this proposition, merely noting that the words are ambiguous, see paragraph 19 of its final argument, Exhibit C24-19.

<sup>24</sup> Mr. Flintoff final argument, Chapter 2, page 5, Exhibit C4-11.

<sup>25</sup> AVEVA final argument, page 3, Exhibit C30-8.

<sup>26</sup> In Appendix A to Order No, G-119-18, the Commission posits a number of circumstances in which the question of “compensation arises”, namely, parking lot operators providing EV charging (for free) and cafes

1 12. BC Hydro submits that what these arguments fail to address is that neither  
2 the café owner nor parking lot operator recover any costs from persons  
3 receiving the service, so neither receive any compensation. Rather, and as  
4 argued by BC Hydro and other parties, the most the parking lot operator and  
5 café owner receive is goodwill, and goodwill is not “compensation”.<sup>27</sup> This is  
6 true whether the costs of the charging services are carried by the business  
7 and reduce profits; are recovered in the price charged for other services (like  
8 parking or a cup of coffee); or are funded by third parties.

9 13. BC Hydro notes the same can be said for the use of the words “directly” and  
10 “indirectly.” A person who gets EV charging service if and only if they buy a  
11 coffee, pay for parking, etc. is paying for the service indirectly (i.e., the EV  
12 charging service is conditional on the payment of something else). A person  
13 who gets the EV charging service unconditionally is not paying directly or  
14 indirectly regardless of how (or from whom) the costs of providing the service  
15 are recovered.

16 14. BC Hydro submits that only where EV charging services are provided on  
17 condition of the customer being required to provide some other "rate,  
18 remuneration, gain or reward" should the arrangement be seen as  
19 compensation and a public utility issue.

20 15. As suggested in BC Hydro’s final argument, the proposed EV Service  
21 Guidelines are a useful way the Commission can respond to those  
22 submissions by parties seeking clarity with respect to this issue and provide  
23 guidance to all parties.

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allowing patrons to charge their electronic devices. In both these examples, as stated in BC Hydro’s final argument, they are at most earning goodwill and not “compensation”.

<sup>27</sup> BC Hydro final argument, paragraphs 17-18, Exhibit C1-5. See also BCSEA final argument, page 18, Exhibit C6-14.

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1 **3 Greenhouse Gas Reduction (Clean Energy)**  
2 **Regulation**

3 16. The Commission sought submissions with respect to whether public utilities  
4 such as FBC and BC Hydro are permitted to invest in EV charging stations as  
5 a prescribed undertaking under section 18 of CEA and section 4 of the  
6 GGRR. Various parties provided comments with respect to the interpretation  
7 of these provisions which BC Hydro will respond to below.

8 17. However, in their submissions with respect to this issue, a number of parties  
9 commented at a high level on the appropriate role public utilities can take with  
10 respect to the development of the EV sector. Within this context, a handful of  
11 parties suggested that public utility involvement and participation in the sector  
12 will somehow tilt the playing field in favour of the public utility and/or there will  
13 be a barrier to the development of the sector because public utility rates will  
14 undercut private sector rates.<sup>28</sup> Firstly, BC Hydro submits that these  
15 arguments are wholly unsupported - no party submitted any evidence on the  
16 record of this proceeding that would suggest this will occur. Secondly, most  
17 interveners, including would-be competitors, support the entry and continued  
18 investment in the EV sector that would be provided by BC Hydro and FBC.  
19 See, for example the submissions of CoV<sup>29</sup>, BCSEA<sup>30</sup>, UDI<sup>31</sup>, FBC<sup>32</sup>,  
20 Greenlots<sup>33</sup>, MEMPR<sup>34</sup>, AddEnergie<sup>35</sup>, BCOAPO<sup>36</sup>, the CEC<sup>37</sup>,

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<sup>28</sup> See CEABC's final argument, page 4, Exhibit C2-2, BCOAPO's final argument, page 15, Exhibit C21-10 and Mr. Guthrie's final argument, page 3, Exhibit C16-5.

<sup>29</sup> See CoV final argument, paragraph 29, Exhibit C5-7.

<sup>30</sup> See BCSEA final argument, pages 38-39, Exhibit C6-14.

<sup>31</sup> See UDI final argument, page 3, Exhibit C9-7.

<sup>32</sup> See FBC's final argument, paragraphs 14 and 21, Exhibit C12-4.

<sup>33</sup> See Greenlots final argument, pages 2 and 4, Exhibit C15-5.

<sup>34</sup> See MEMPR's final argument, paragraphs 27 and 42, Exhibit C19-10.

<sup>35</sup> See AddEnergie's final argument, pages 3-4, Exhibit C20-6.

<sup>36</sup> See BCOAPO's final argument, page 14 (though qualified by its submissions on page 15), Exhibit C21-10.

<sup>37</sup> See the CEC's final argument, paragraph 202, Exhibit C24-19.

1 ChargePoint<sup>38</sup>, Tesla<sup>39</sup>, VEVA<sup>40</sup> and CEA<sup>41</sup>. Finally, and as confirmed in its  
2 evidence, BC Hydro agrees that any EV service rate it would seek  
3 Commission approval of would be a market rate (as best can be  
4 determined).<sup>42</sup> As such, these arguments should not be accepted by the  
5 Commission.

6 18. BC Hydro's final argument provided a fulsome review of section 18 of CEA  
7 and section 4 of the GGRR. It submitted that the GGRR, as currently drafted,  
8 has relatively little application to the EV charging sector<sup>43</sup> and that for entities  
9 such as BC Hydro and FBC, the GGRR offers an appropriate degree of  
10 exemption but in circumstances that are too narrow. That is why BC Hydro  
11 proposed an amendment to the GGRR that would facilitate broader  
12 involvement by itself and FBC in the EV sector more generally, something  
13 that many parties are supportive of and see a need for.<sup>44</sup>

14 19. Of the parties that submitted comments with respect to the GGRR BC Hydro  
15 has only the following clarifying comments. At page 13 of its final argument,  
16 BCOAPO states that the cost-effectiveness test outlined in section 4(4) of the  
17 GGRR<sup>45</sup> applies to classes of undertakings prescribed by section 4(3)(c) of  
18 the GGRR (a research and development project or pilot project).<sup>46</sup> This is  
19 incorrect. Section 4(4) applies only to section 4(3)(a) or (b) and is therefore

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<sup>38</sup> See ChargePoint's final argument, page 13, Exhibit C25-10.

<sup>39</sup> See Tesla's final argument, page 8, Exhibit C28-6.

<sup>40</sup> See VEVA's final argument, page 13, Exhibit C30-8.

<sup>41</sup> See CEA's final argument, page 3, Exhibit C34-6.

<sup>42</sup> See BC Hydro response to BCUC IR 1.2.1, Exhibit C1-4.

<sup>43</sup> BC Hydro final argument, paragraph 24, Exhibit C1-5.

<sup>44</sup> See parties listed in paragraph 17, above.

<sup>45</sup> For reference, section 4(4) of the GGRR provides: *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.*

<sup>46</sup> For reference, section 4(3)(c) of the GGRR provides: *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.*

1 not applicable to public utilities that provide EV charging services on a  
2 research and development or pilot basis.

3 20. Related to this, BCOAPO also contends that because of the GGRR  
4 requirement that a project be “cost effective” (again, that only applies to  
5 sections 4(3)(a) and (b)) it suggests that the cost recovery provisions outlined  
6 in section 18(2) of CEA result in costs being recovered from EV charging  
7 station users only.<sup>47</sup> Mr. Flintoff makes similar statements in his final  
8 argument but relies on the use of the words “each fiscal year” to suggest that  
9 cost recovery is somehow limited to participating customers only.<sup>48</sup>

10 21. This interpretation of section 18(2) of CEA is incorrect. Section 18(2) of CEA  
11 states:

12 In setting rates under the Utilities Commission Act for a public  
13 utility carrying out a prescribed undertaking, the commission  
14 must set rates that allow the public utility to collect sufficient  
15 revenue in each fiscal year to enable it to recover its costs  
16 incurred with respect to the prescribed undertaking.

17 22. As provided in BC Hydro’s final argument, which is worth repeating, if an  
18 entity is a “public utility”, and if the public utility engages in a prescribed  
19 undertaking, two legal consequences follow:

20 ▶ Under CEA subsection 18(2), the Commission is obliged to allow  
21 the public utility to recover the costs of the prescribed undertaking  
22 in the public utility’s rates; and

23 ▶ Under CEA subsection 18(3) the Commission may not, “directly or  
24 indirectly” exercise a power that would prevent the utility from  
25 engaging in the prescribed undertaking.

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<sup>47</sup> BCOAPO final argument, page 13, Exhibit C21-10.

<sup>48</sup> Mr. Flintoff final argument, pages 11, 14 and 23, Exhibit C4-11.

1 23. This means, if a public utility provides EV service that is within a class of  
2 prescribed undertakings, it is entitled to full cost-recovery from those who pay  
3 for the service as participating customers and, to the extent of any shortfall,  
4 from all other (i.e. non-participating) customers. More specifically, the rate  
5 consequence of an activity being within a class of undertakings is that the  
6 costs of the service not recovered in rates for the service, can be recovered in  
7 a revenue requirement application (**RRA**) of the utility. The only import of the  
8 use of the words “each fiscal year” is to underscore the revenue requirement  
9 context of cost-recovery.

#### 10 **4 Exemption in favour of "not otherwise public utilities"**

11 24. All interveners support some form of exemption order and differ only with  
12 respect to the specific exceptions that should be carved out, if at all.

13 25. As stated in its final argument, BC Hydro supports an exemption in favour of  
14 entities that are providing EV charging services for compensation and are not  
15 otherwise public utilities.<sup>49</sup> As provided by a number of parties, an exemption  
16 would reduce barriers to entry and reduce operating costs thereby facilitating  
17 the development of the market.

18 26. However, BC Hydro does not agree with those interveners who suggest there  
19 should be no exceptions to the proposed Exemption Order<sup>50</sup> or that the  
20 Commission should somehow “forebear” from regulating these parties  
21 (whether by order or by a purposive interpretation of the UCA).<sup>51</sup>

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<sup>49</sup> BC Hydro final argument, paragraph 30, Exhibit C1-5.

<sup>50</sup> For example, Mr. Guthrie, Tesla, and CEABC.

<sup>51</sup> For example see page 5 of ChargePoint’s final argument which argues that the Commission should “forebear” from regulating by purposively interpreting the public utility definition so that EVCS owners and operators are not caught by it.” See also page6 and 15 of VEVA’s final argument, Exhibit C30-8.

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- 1 27. First, contrary to ChargePoint and VEVA's assertions, the Commission does  
2 not have the power, express or otherwise, to generally forebear from  
3 regulating a sector. If the Legislature had seen fit to empower the  
4 Commission with the ability to forebear from exercising its powers, it would  
5 have done so, clearly and expressly.<sup>52</sup> Instead, the Legislature has seen fit to  
6 empower the Commission, with the advance approval of the Lieutenant  
7 Governor in Council, to exempt entities from regulation. As such, the  
8 Commission should disregard any submissions that request a general  
9 forbearance order from the Commission with respect to EV service providers  
10 (that are not otherwise public utilities).
- 11 28. With respect to those parties who say the Commission should issue an  
12 exemption order with no exceptions, in BC Hydro's view that position is not  
13 tenable in light of the early stage of the EV market. While BC Hydro does not  
14 advocate for prescriptive and heavy-handed regulation of the sector,  
15 BC Hydro does believe it is important that the Commission maintain its ability  
16 to review complaints, ensure safety standards and intervene if and when  
17 necessary.
- 18 29. Contrary to many of the submissions on this issue the Commission's residual  
19 jurisdiction maintained by carving out the proposed exceptions is in almost all  
20 cases permissive. This means that while the Commission will retain its ability  
21 to regulate, it can do so as necessary and only with respect to those areas  
22 contained in the proposed exception provisions. In BC Hydro's view, the  
23 Commission can therefore exercise those powers judiciously and, in any  
24 event, in a manner that doesn't impose a regulatory burden on the (non-utility)  
25 EV service providers.

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<sup>52</sup> For example, a regulatory body that does have the express power to forebear is the Canadian Radio-  
television and Telecommunications Commission which is given this power, expressly, via section 34 of the  
*Telecommunications Act*, SC 1993, c 38.

1 30. MEMPR supports an exemption order but suggests the issuance of a different  
2 exemption order for Level 1 and Level 2 service providers to that of Level 3  
3 (DCFC) service providers.<sup>53</sup> BC Hydro understands MEMPR to be suggesting  
4 that an exemption order in favour of Level 1 and Level 2 service providers  
5 would be without any exceptions whereas an exemption order in favour of  
6 Level 3 service providers would include the exceptions as proposed by the  
7 Commission.<sup>54</sup> As stated above, in almost all cases the exceptions are  
8 permissive and provide the Commission with significant discretion in terms of  
9 the exercise of those residual powers. As such, there is no need for two  
10 different exemption orders. BC Hydro is of the view that it is preferable that  
11 there be one exemption order for all EV charging services acknowledging that  
12 the Commission will employ its residual powers differently depending on the  
13 circumstances.

14 31. The CoV also supports an exemption order but proposes that the order  
15 include an exception from section 71 of Part 5 of the UCA – the requirement  
16 to file “energy supply contracts.”<sup>55</sup> The CoV states that the requirement to file  
17 energy supply contracts was not designed for EV charging services and  
18 would be an unnecessary regulatory burden.<sup>56</sup> Energy supply contracts are  
19 generally understood to be wholesale (and not retail) contracts, and as such,  
20 including section 71 as an exception in the proposed Exemption Order may  
21 not therefore be necessary. However, BC Hydro does not oppose including

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<sup>53</sup> See paragraphs 13 and 16-26 of MEMPR’s final argument, Exhibit C19-10. BC Hydro notes that at paragraphs 19 and 39 of its final argument MEMPR recommends that at the conclusion of this phase of the Inquiry the Commission make an order that exempts a person that is not otherwise a public utility from all provisions of the UCA in respect of Level 1 and Level 2 charging equipment owned or operated by the person. MEMPR correctly notes that the Commission cannot make such an order without the advance approval of the Minister. As such, all the Commission can properly do is propose to the Minister a form of exemption order that it would issue should the Minister give approval.

<sup>54</sup> AddEnergie suggests something similar, as does CEA. AddEnergie advocates for the “greatest possible exemption for entities that provide Level 1 and Level 2 charging for compensation” whereas does not oppose some exceptions to the exemption for Level 3 charging services, see pages 2-3 of AddEnergie’s final argument, Exhibit C20-6.

<sup>55</sup> CoV final argument, paragraph 13, page 5, Exhibit C5-7.

<sup>56</sup> *Ibid.*

1 section 71 as an exception to the proposed Exemption Order. As an  
2 alternative, BC Hydro submits that the Commission could confirm that retail  
3 EV charging arrangements are not energy supply contracts in the proposed  
4 EV Service Guidelines.

5 32. As stated in BC Hydro's final argument, the scope of the Commission's  
6 residual jurisdiction should focus on information gathering. Contrary to those  
7 submissions by parties who have suggested this will be too burdensome, the  
8 Commission will require an evidentiary basis for determining how and when  
9 the degree of regulatory oversight might have to change as the EV market  
10 changes and when it ought to intervene, in specific cases. BC Hydro therefore  
11 remains of the view that the proposed Exemption Order (with the addition of  
12 section 24<sup>57</sup>) is reasonable and appropriate. Importantly, the exceptions  
13 enable the Commission to ensure the objectives of the UCA continue to be  
14 served as the EV sector develops but will not impede its development.

## 15 **5 Proposed EV Service Guidelines**

16 33. In its final argument, BC Hydro proposed that the Commission issue EV  
17 Service Guidelines as part of its Phase 1 Report, even if the Commission  
18 makes recommendations to the Province regarding the Exemption Order or  
19 changes to the GRR. The reason for the proposal is to provide as much  
20 clarity as can be provided as soon as possible.

21 34. As is evident from the Intervener Arguments, lack of clarity, perceived  
22 ambiguity in definitions and the application of the UCA and a general "fear of

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<sup>57</sup> As stated in BC Hydro's final argument, the inclusion of section 24 is important so that the Commission is able to conduct enquiries and keep itself informed about the EV sector, as necessary.

1 regulation” is a consistent theme<sup>58</sup> that the issuance of the proposed EV  
2 Service Guidelines could go a long way to resolving.

3 35. A number of parties provided submissions with respect to clarifying various  
4 aspects of the Commission’s regulatory oversight with respect to EV service  
5 providers that BC Hydro did not include in its draft proposed EV Service  
6 Guidelines but which could usefully be added. Those are: clarification that a  
7 person (not otherwise a public utility) who provides EV charging services to  
8 itself, employers serving employees or landlords serving tenants are not  
9 public utilities and not subject to regulation; and, the public utility status of  
10 strata corporations providing EV charging service to strata owners.

11 36. At section 7 of its final argument, BCSEA suggests that the Commission  
12 clarify whether EV charging service by, or arranged by, a strata corporation to  
13 strata owners within a strata-owned parking facility is within the definition of  
14 “public utility”. BC Hydro agrees with BCSEA’s analysis at section 7.1.1 of its  
15 final argument and submits that it is likely that EV charging service by a strata  
16 corporation to strata owners within a strata-owned parking facility would be  
17 captured by the definition of “public utility.” As such, BC Hydro agrees with  
18 BCSEA that strata corporations would fall within the category of a party  
19 providing EV charging services for compensation that are not otherwise a  
20 public utility and should therefore fall within the proposed Exemption Order.  
21 BC Hydro also agrees that the lack of clarity in this respect adds to the  
22 barriers to the adoption of EV charging service by strata corporations and  
23 could usefully be clarified. BC Hydro therefore proposes that the provision of  
24 EV charging service by strata corporations to strata owners be explicitly  
25 referenced in respect of the proposed Exemption Order in the proposed EV  
26 Service Guidelines.

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<sup>58</sup> See the final arguments of ChargePoint, VEVA and Tesla for example.

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1     **6           Other Issues Raised**

2     37.    A number of parties have raised various issues that either do not fit neatly  
3           within one of the Phase 1 Issues or which, in BC Hydro’s view, would be more  
4           appropriately addressed at a later stage, if necessary. In no particular order,  
5           BC Hydro provides the following brief reply with respect to those issues.

6     38.    At paragraph 9 of its final argument, FBC proposes the adoption of utility  
7           specific pooled rates for EV service on a capital program basis for a period of  
8           time. This is a rate design issue and, as many others have noted, including  
9           FBC, this proceeding is not establishing rate design principles. As such, it is  
10          an issue that should be addressed at a later date in a forum or proceeding  
11          appropriate for such review.

12    39.    At page 15 of his final argument, Mr. Flintoff queries how the Panel will  
13          address the replacement of government fuel tax revenue. Clearly, this issue is  
14          outside the scope of the Phase 1 Issues.

15    40.    At section 6.2 of his submissions, Mr. Flintoff also raises what he calls a  
16          “safety gap” issue. He poses questions about the jurisdiction of the  
17          Commission and Technical Safety BC with respect to the safety of EV  
18          charging stations.

19    41.    Safety at BC Hydro is a core value. BC Hydro works with Technical Safety  
20          BC, the Commission, and other safety authorities on a regular and ongoing  
21          basis to ensure that the public is safe around our system. Despite its  
22          importance, safety issues are outside the scope of this phase of the EV  
23          Inquiry. Moreover, BC Hydro submits that a review of safety related regulation  
24          of EV charging stations requires the consideration of evidence not included in  
25          Phase 1 of the EV Inquiry, and the potential input of additional parties who  
26          have yet to become engaged in this proceeding. Therefore, BC Hydro

1 proposes that questions regarding the jurisdiction of the Commission and  
2 Technical Safety BC with respect to the safety of EV charging stations be  
3 addressed in Phase 2 or a subsequent proceeding.

4 42. In its submission, ECABC proposes that the Commission and government  
5 consider the requirement that anyone working on an EV charging station be  
6 certified by the Electric Vehicle Infrastructure Training Program. BC Hydro  
7 notes that there is little, if any, evidentiary basis for the proposal and ECABC  
8 does not suggest why that particular certification is preferable to any other  
9 certification.<sup>59</sup> Notably, ECABC does not provide any basis as to why  
10 BC Hydro's safety requirements may or may not be appropriate. BC Hydro  
11 submits that this issue is outside the scope of the Phase 1 Issues and  
12 regardless, the Commission does not have a sufficient basis on which to  
13 make the requested recommendation.

14 43. Finally, a number of parties have raised issues with respect to clarification  
15 around landlord/tenant relationships, strata corporations and issues arising in  
16 condo or multi-unit residential buildings.<sup>60</sup> For its part, the CoV submits that  
17 the re-sale provisions of the BC Hydro Electric Tariff should be revisited, at  
18 the appropriate time, in light of the EV Inquiry to allow landlords to mark-up  
19 BC Hydro electricity bills for re-sale to EV users.<sup>61</sup> BC Hydro submits that  
20 these are all non-trivial questions not clearly part of the Phase 1 Issues and

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<sup>59</sup> For example, there is no discussion as to other certifications or safety standards that are currently applicable to EV charging stations nor is there any discussion of BC Hydro's safety requirements.

<sup>60</sup> For example, BCOAPO suggests that the scope of the definition of "tenant" should be considered and specifically, whether or not the definition extends to strata owners in strata corporations. It acknowledges that the issue goes beyond the scope of the questions posed by the Commission. See page 5 of BCOAPO's final argument, Exhibit C21-10.

<sup>61</sup> CoV final argument, paragraph 11, page 4, Exhibit C.

1 are all more appropriately addressed at a later date and/or in a different forum.

2 **ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22<sup>nd</sup> DAY OF AUGUST**  
3 **2018.**

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5 \_\_\_\_\_  
6 Fred James  
7 Chief Regulatory Officer  
8 British Columbia Hydro & Power Authority