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August 22, 2018

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

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

Dear Sirs/Mesdames:

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

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "CEC"). Attached please find the CEC's Reply Submission with respect to the above matter.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/jj
cc: CEC
cc: Registered Interveners

**COMMERCIAL ENERGY CONSUMERS
ASSOCIATION OF BRITISH COLUMBIA**

REPLY SUBMISSIONS

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

August 22, 2018

Commercial Energy Consumers Association of British Columbia

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

Table of Contents

I.	EV Charging as Public Utilities under the <i>Utilities Commission Act</i>	2
	Legal Definition of Public Utility	2
	Legal Interpretation of the Word ‘For Compensation’ in the Definition of Public Utility.....	6
II.	Should Entities Not Otherwise Public Utilities Supplying Electricity to EV End Users Be Regulated At All?	8
III.	Regulation for Entities that are Not Otherwise Public Utilities.....	9
	Commission Should Not Regulate Use	11
	Short-Term and Long-Term Regulation.....	12
IV.	Participation By Entities that are Public Utilities.....	12
V.	Regulation for Entities that are Public Utilities.....	14
VI.	BCUC Strawman.....	17
VII.	Revisit Exemption Framework in Five Years	18
VIII.	<i>Clean Energy Act</i> and Greenhouse Gas Reductions Regulation	18
IX.	Consistency with Other Jurisdictions	21

**COMMERCIAL ENERGY CONSUMERS ASSOCIATION
OF BRITISH COLUMBIA**

Reply Submissions

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

The Commercial Energy Consumers Association of BC (the “CEC”) represents the interests of ratepayers in applications before the BC Utilities Commission (“BCUC” or “Commission”).

The CEC has participated in the current Inquiry through the filing of written evidence, making and responding to information requests, and reviewing the evidence provided by other interveners. The CEC provided its Final Argument on July 31, 2018. In addition to addressing the key questions posed by the Commission in Appendix A to Order G-119-18, the CEC provided additional commentary with regard to several related issues, including roles and responsibilities of the Commission, forms of regulation given market circumstances, and regulatory objectives for the electric vehicle (“EV”) charging market and others.

The CEC has reviewed the evidence and Final Arguments provided by interveners. Unless otherwise noted, the CEC stands by its Final Argument and provides the following Reply Argument for the Commission panel’s consideration.

The CEC submits that, overall, there is considerable congruence between many of the interveners on several points. In particular, interveners have expressed a significant desire for EV charging to develop into a robust competitive market and have overwhelmingly endorsed at least some form of significant exemption from the *Utilities Commission Act* (“UCA”) for competitive providers¹ of EV charging services. Additionally, there appears to be some significant support for some level of utility participation, but only to the extent that it can be used to ‘kickstart’ market development and does not interfere with competitive opportunities. The CEC generally supports these positions.

The CEC submits that the elicitation of generally consistent viewpoints is a very positive outcome of this Inquiry and will serve to provide a strong foundation for the determinations the Commission will make further to this Inquiry or in other related applications. Additionally, the strong support may be highly valuable if and when the Commission makes recommendations to the provincial government. Despite the value of this support base, the CEC believes it is important that the Commission strive to make the best determinations possible in these important decisions and not undertake to simply endorse a popular vote decision.

The key points that the CEC would like to emphasize are as follows:

- a) The EV charging market is a competitive market and should not be regulated by the Commission except to the extent required by law.

¹ ie. Companies not otherwise considered ‘public utilities’

- b) There are differing views as to whether or not EV charging services fall under the UCA as public utilities at all.² While the CEC has provided its evidence and submission that EV charging service may legally be included in the definition of ‘public utility’, the CEC recommends that the Commission make a considered determination on the ‘for compensation’ issue and focus on providing the market clarity and certainty. The CEC would not object to a BCUC finding that EV charging services are not within the definition of ‘public utility.’
- c) The term ‘for compensation’ can be broadly interpreted and can arguably encapsulate a person who provides EV charging for free.
- d) If the Commission determines that regulation is required under the UCA, the Commission should request the government to alter the definition of public utility to exclude EV charging service for entities that are not otherwise considered public utilities.
- e) The Commission should consider immediately implementing light-handed regulation on a temporary basis for entities that are not otherwise considered to be public utilities. Complete exemption is an appropriate option for the Commission to recommend to government as a legislative change.
- f) There is no need to differentiate between Level 1, Level 2 and Level 3 charging.
- g) As an initial basis for light-handed regulation the Commission’s Strawman is acceptable, with amendments as provided in CEC Final Arguments.
- h) Utility participation in the EV charging market provides risks to the development of the competitive market and has ratepayer impacts if provided through a regulated utility and financed through rate base.
- i) Any utility participation must be designed to avoid interference in the growth and maturing of the competitive market.
- j) Utility participation (through its regulated entity) where costs are included in ratebase should be fully regulated.

I. EV CHARGING AS PUBLIC UTILITIES UNDER THE *UTILITIES COMMISSION ACT*

Legal Definition of Public Utility

1. In Exhibit A-35, Reasons for Order G-119-18 pages 4-5 the Commission made a determination that:

² Exhibit C25-10 ChargePoint Final Argument, Exhibit C28-6 Tesla Final Argument and Exhibit C6-15 BCSEA Reply Argument

‘if one provides charging services for compensation, then the UCA requires the BCUC to regulate unless an exemption is granted.’³

2. The Panel then went on to discuss and query the appropriate definition of ‘for compensation’ and provided this as a question for review in Phase 1 of the Inquiry.
3. At least three interveners in this proceeding have questioned the validity of the finding that EV charging services are ‘public utilities’ at all.
4. Tesla argues that from a Plain Meaning approach:

‘The BCUC has not indicated which terms in the UCA it claims apply to EVCS practices. If they are “delivery or provision of electricity....or any other agent for the production of light, heat, cold, or power...” these terms are not dispositive of the issue from a plain reading of the language, either. Again, electricity is not delivered or provided in exchange for compensation. At present, most Tesla charging sessions are entirely complimentary....

Furthermore, functionally, an electric vehicle stores a chemical battery charge for the sake of mobility and transportation; not for producing light, heat, cold or power like these terms would ordinarily be used to refer to providing electricity delivered to a home. The equipment EV charging providers operate can only charge electric vehicles. The operators do not provide electric service for all inhabitants and electrical equipment within the area they operate. Instead EV operators serve a limited number of consumers that have invested in electric vehicles, including consumers that reside in other provinces or countries, but happen to drive and charge their vehicles in BC’.⁴

5. Similarly they point out that from a Contextual approach:

In reference to the terms used in the UCA definition of “public utility,” Tesla notes that the UCA does not provide a definition for the term “production.” The use of the word “production” is an odd and ambiguous use of this term, especially if applied to the EVCS context. Regardless of all the other terms in the statute, nothing is conveyed to an electric vehicle customer for the “production of light, heat, cold, or power...” An EV customer gets a parking spot for an allotted amount of time. In exchange he or she can charge the battery in an EV for transportation purposes. Arguably, the use of the word “production” makes no sense in this context or is ambiguous at best. Accordingly, then a reasoned contextual approach to reading the statute should apply. A reasonable reading of the statute that considers context and avoids absurdity cannot possibly conclude that EVCSs should be regulated as public utilities.

³ Exhibit A35 Appendix A to Order G-119-18

⁴ Exhibit C28-6, Tesla Final Argument page 5

6. And they go on to state that:

Surely the legislature did not intend for the BCUC to regulate cafes as public utilities in the scenario above. Further, the legislature did not contemplate EVCSs when the UCA definition of “Public Utility” was drafted and it should not apply to EVSC here. As yet another example, the single and limited service of an EVCS is similar to a laundromat that provides heat only for drying clothes. Although a laundromat could ostensibly be considered a “public utility” under Part 3 of the UCA, it is not a public utility— nor should it be under any reasonable or measured approach.⁵

7. ChargePoint submits that:

‘... a careful application of the statutory definition to the full circumstances of EVCS should lead the Commission to conclude that EVCS owners and operators and EV charging services are not public utilities within the Commission’s jurisdiction because they do not reflect a sale of electricity, but instead provide a service that uses electricity. The word “electricity” in the UCA should be read as limited by the entire context of this provision, encompassing only the sale, delivery or provision of electricity service (e.g., a customer’s connection to the generation/transmission/distribution network so that they can be provided with electricity), rather than any situation where electricity is used ancillary to the sale, delivery or provision of a different service. Many North American jurisdictions, including Ontario, New York, Massachusetts, and Missouri have reached this conclusion’.⁶

8. Additionally ChargePoint states:

There are a myriad of everyday items whose sale reflects the operation of “facilities for the...sale...of...[an] agent for the production of light, heat, cold or power to or for the public...for compensation”. Grocery store sales of propane, charcoal and batteries would all satisfy the definition, for example, but the Commission quite properly does not assert jurisdiction over charcoal sales.

EVCS are no different. EVCS owners and operators provide competitive services that are market based. Customers have access to diverse product and service offerings in a working market, i.e., do not face the anti-competitive risks faced by customers of natural monopolies.⁷

9. BCSEA states in its reply argument:

the word “electricity” in the definition of public utility must be interpreted harmoniously with the purpose of the UCA to regulate natural monopolies and protect consumers from the exercise of economic power. The provision of EV charging

⁵ Exhibit C28-6, Tesla Final Argument page 6

⁶ Exhibit C25-10 ChargePoint Final Argument page 4

⁷ Exhibit C25-10 ChargePoint Final Argument pages 5-6

service is not the provision of “electricity” within the meaning of “public utility” where the putative “electricity” is not provided by a natural monopoly in circumstances requiring the BCUC to protect consumers from the exercise of economic power. This is why a store selling flashlight batteries is not a public utility. This is why BC Hydro and FBC are public utilities.⁸

10. They go on to argue that:

The modern principle of statutory interpretation requires the Commission to interpret the definition of public utility “harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” This is not optional. It is not open to the Commission to conclude that the wording of the definition of public utility captures entities providing something, i.e., “electricity,” in circumstances that are beyond the purpose of the UCA. The definition of public utility is the foundation of the Commission’s jurisdiction to regulate public utilities under the Act. The Commission has the authority and the responsibility to interpret the definition of public utility in accordance with the purpose of the Act.⁹

11. The CEC predicated its evidence and Final Arguments on the premise that the definition of ‘public utility’ may include EV charging services. The CEC notes that the Commission appears to have made this determination, at least on a de facto basis, both in this Inquiry and in the Bakerview EcoDairy¹⁰ proceeding.

12. However, the CEC submits that there is some significant validity to the arguments posed by Tesla, ChargePoint, and BCSEA which deserve Commission consideration.

13. In its Final Arguments, the CEC points out that the Legislature did not likely intend to have the BCUC supervise all persons providing electricity. While the CEC quotation below relates specifically to the ‘For Compensation’ question, it is equally applicable to the interpretation of the general definition of ‘public utility’.

‘While the provision is sufficiently clear, such an interpretation may be in contrast to other principles of statutory interpretation and may not be the intended interpretation. It is unlikely that the intent of the UCA, and the legislation in their drafting of the statute, was to give the Commission oversight and general supervision of persons providing electricity in some of the manners contemplated by this Legislative Inquiry. The administrative and regulatory burden of overseeing every person or entity providing electricity through charging services, particularly those on a small-scale model with no direct monetary compensation could not have been intended by the BC Legislature.’¹¹

⁸ Exhibit C6-15 BCSEA Reply Argument page 3

⁹ Exhibit C6-15, BCSEA Reply Argument page 3

¹⁰ Exhibit A35, BCUC Order and Reasons for Decision page 7 of 8

¹¹ Exhibit C24-19, CEC Final Argument page 4-5

14. The question of whether or not EV charging services should be considered as ‘public utilities’ is fundamental to the future role of the Commission in EV Charging Service.
15. The CEC recommends that the Commission undertake to evaluate the arguments and make a firm determination as to whether or not EV charging services qualify as ‘public utilities’ at all, prior to making determinations on the balance of the issues currently in scope in this proceeding.
16. The CEC would not object to a finding that EV charging services are not included in the definition of ‘public utility’. The CEC would recommend the Commission seek clarification from the Provincial Government on this point, including an amendment to further clarify any ambiguity on this point.
17. The CEC identified ‘Change Definition of Public Utility’ as Option 1 for exemptions in its Final Argument¹² and as its preferred outcome for deregulation.¹³ The CEC notes that such an option provides benefits such as:

‘Exemption by definition of the term ‘public utility’ would also rationalize the current regulatory distinction between those providing EV charging services for compensation and those providing it for free, who are currently not being regulated as public utilities. The CEC also believes it is appropriate for the Commission to prefer complete exemptions over the long term to avoid stifling the maturity (sic) of a competitive market, and also to avoid a risk of over-regulation with unnecessary costs and higher than necessary rates.’¹⁴

18. The CEC submits that an early finding by the Commission that EV charging services are not included in the definition of ‘public utility’ would resolve several significant issues and allow for the competitive market to develop according to appropriate market forces. Alternatively, if the Commission finds uncertainty in the definition the CEC recommends that the Commission act to limit regulation and recommend to the Provincial government clear legislative exemption from definition as a public utility for EV charging services.

Legal Interpretation of the Word ‘For Compensation’ in the Definition of Public Utility.

19. As noted in its Final Argument, the CEC considers that the phrase ‘for compensation’ is (arguably) sufficiently broad to encapsulate 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 customers.¹⁵ This position is supported by a variety of other interveners.

¹² Exhibit C24-19, CEC Final Argument page 18

¹³ Exhibit C24-19, CEC Final Argument page 18-19

¹⁴ Exhibit C24-19, CEC Final Argument page 19

¹⁵ Exhibit C24-19, CEC Final Argument page 3

20. Several interveners argue for a specific interpretation of the word ‘free’.
21. For instance BC Hydro states that:

‘Entities that provide EV charging services “for free, unconditionally” are not providing service for compensation, and are not public utilities within the meaning of that expression in the UCA.... ‘whereas ‘Entities that provide EV charging services for compensation are public utilities’.¹⁶
22. FBC argues that:

‘the meaning of “for compensation” within the definition of a public utility as defined in the UCA appears to be consistent with a requirement that there be some form of quid pro quo, and that something more than goodwill as a result of the operation of a free service would be required. For example, EV charging service that is provided for free by a business, with the intention of attracting customers to the business, would not be “for compensation” under the UCA.’¹⁷
23. FBC however does not see any of the three examples provided by the Commission as constituting situations in which the service is provided ‘for compensation’.¹⁸
24. MEMPR suggests that the question of whether a person falls within the definition of a public utility depends upon the particular circumstances of an individual case, and would consider the nature of the other services being offered and whether the costs of those services had been inflated to specifically recover the cost of providing the EV charging service.¹⁹ MEMPR encourages the Panel to take a purposive approach towards its interpretation of the definition of public utility, by considering the objectives of the statute as a whole and how its interpretation in the context of this Inquiry may impact other entities that provide “free” electricity to customers for various purposes (e.g., cafes or airports providing paying customers with free electricity to charge their electronic devices or pay parking lots in the north of the province that provide access to an electrical plug for block heating in some parking spaces).²⁰
25. As noted above, the CEC considers the definition of ‘for compensation’ to be broad, and as such could encompass most providers of EV charging service.
26. The CEC is also of the view that discriminating between ‘free’ and ‘for compensation’ becomes a nearly impossible situation to resolve under the BC Hydro, FortisBC and MEMPR interpretations.

¹⁶ Exhibit C1-5, BC Hydro Final Argument pages 1 and 2

¹⁷ Exhibit C12-4, FortisBC Final Argument page 3

¹⁸ Exhibit C12-4, FortisBC Final Argument page 3

¹⁹ Exhibit C19-10 MEMPR Final Argument page 2

²⁰ Exhibit C19-10, MEMPR Final Argument page 2

27. The CEC submits that it is not reasonable or appropriate for the Commission to attempt to determine the value of the quid pro quo being offered.
28. The CEC submits that this discussion highlights the issue of regulating EV charging of any kind.
29. The distinction of ‘free’ versus ‘for compensation’ in regulation suggests that the issue at hand for the regulation is the competitive nature of the service and the opportunity for uncompetitive profits.
30. The CEC points out that the vast majority of interveners, including the CEC, have identified the market as being non-monopolistic. Nearly all interveners have expressed a view that the market is competitive, or has the ability to become competitive.
31. The CEC submits that for both a legal perspective, and for clarity, it is reasonable for the Commission to broadly interpret the UCA as including all public EV charging service and to implement exemptions immediately, concurrently with a request to the Ministry of Energy, Mines and Petroleum Resources to alter the definition of ‘public utility’ as discussed above.

II. SHOULD ENTITIES NOT OTHERWISE PUBLIC UTILITIES SUPPLYING ELECTRICITY TO EV END USERS BE REGULATED AT ALL?

32. The CEC notes that many interveners have differentiated their submissions on whether or not public utilities supplying electricity to EV end users should be regulated at all, based on the level of charging service.
33. It appears to the CEC that most interveners support ‘no regulation’ for Levels 1 and Level 2 charging, whereas some interveners believe regulation is necessary for Level 3 DCFC charging.
34. Many interveners also distinguish between entities that are ‘public utilities’ and those that are not ‘public utilities’ except as providers of EV charging services.
35. FBC states that:
 - FBC believes that charging stations that are providing Level 2 or Level 1 service and that are owned by parties not otherwise public utilities should either be provided some form of exemption from relevant sections of the UCA, or alternatively be subject to a very light-handed form of regulation, such as complaints-based regulation.
 - For Level 3 Direct Current Fast Charging (“DCFC”) stations and any future higher capacity EV charging stations, FBC believes that more regulatory oversight is appropriate, with differences however between utility-owned stations, and those owned by nonregulated parties:

- For utility-owned stations, FBC expects to apply for postage stamp rates for all stations in the same category (for example, Level 3 DCFC). FBC believes a streamlined approach for rate setting is appropriate where, once a charging service rate is approved for a particular segment of its EV charging stations, and as long as the aggregate projected revenues and costs from all stations in the category do not result in a revenue deficiency over a pre-determined amount or time period, no further review or rate approval is required.
 - For non-regulated parties providing DCFC service, FBC suggested that the Commission does not need to set rates for EV stations in this category and the station owners should have discretion to determine their own pricing.²¹
36. The CEC recommends that EV charging provided by entities that are otherwise not public utilities be immediately lightly regulated with a concurrent recommendation to the Provincial government for complete exemption from regulation.

III. REGULATION FOR ENTITIES THAT ARE NOT OTHERWISE PUBLIC UTILITIES

37. The CEC submits that much of the discussion regarding the appropriateness of regulation for entities that are not otherwise public utilities relates to the interveners' understanding and interpretation of the nature of the EV charging markets, where DCFC charging is seen as lacking competition, being unlikely to develop, or that customers are 'captive' to the utility. In contrast, Level 1 and Level 2 charging is seen as competitive.
38. For instance, MEMPR states:

Several intervenors filed evidence indicating that the DC fast-charging market is in an early development stage. At this early stage of market development, MEMPR is not opposed to some form of light-handed regulation by the Commission of DC fast-charging service providers who are not otherwise public utilities.

This position is largely informed by the fact that, unlike Level 1 and Level 2 charging services, there are some significant barriers to entry into the DC fast-charging market created by the higher cost of installation and operation. In its application for approval of rate design and rates for its DC fast charging service, FBC estimated gross capital expenditures of \$492,000 to build five DC fast-charging stations.²² In this early market development stage, it may be difficult for service providers to achieve a positive return on their DC fast-charging investment.²³

²¹ Exhibit C12-4, FBC Final Argument page 1 and 2

²² NB: The CEC does not consider an expenditure of \$500,000 for 5 DC fast charging stations to represent a significant barrier to entry

²³ Exhibit C19-10 MEMPR Final Argument page 5

39. The CEC submits that the MEMPR position is not a sound basis for Commission regulation and can benefit from other evidence in this inquiry.

40. The CEC notes that MEMPR also points out that:

An exemption from provisions of the UCA for entities not otherwise public utilities that are providing EV charging services would be consistent with the key principles that were adopted by the Panel for the Inquiry, namely, that the Commission should only regulate where necessary, and regulation should not impede competitive markets.²⁴

41. The CEC reiterates its views that the evidence on the record is overwhelming that EV charging is a competitive market and is not a natural monopoly.²⁵

42. The CEC considers that DCFC charging, along with Level 1 and Level 2 charging, operate in a competitive market, even if that market is at an early stage of development.²⁶

43. The CEC submits that the ‘early stage’ development does not provide a rationale for regulation. Rather, the barriers to entry that have been and could be imposed by BCUC regulation will serve to hinder development unless rapidly and significantly reduced. The market should be left to develop according to competitive activity.

44. This position is supported by several interveners such as ChargePoint,²⁷ Tesla,²⁸ CEABC²⁹ and Guthrie.³⁰

45. The CEC also does not support the ‘chicken and egg³¹’ argument posed by some that suggests the market cannot develop independently without assistance. The CEC notes that an absence of pre-existing customer demand is the situation for many new technologies and is ultimately resolved by market forces anticipating future profit potential and investing to draw customers into the market.³²

46. ChargePoint also notes the complexities that exist around differentiating between Level 3 charging and Level 1 and 2 charging. They state:

²⁴ Exhibit C19-10 MEMPR page 3

²⁵ Exhibit C24-19 CEC Final Argument page 13

²⁶ Exhibit C24-19 CEC Final Argument pages 13-14

²⁷ Exhibit C25-10 ChargePoint Final Argument page 9

²⁸ Exhibit C28-6 Tesla Final Argument page 7

²⁹ Exhibit C2-2, CEABC Final Argument page 3

³⁰ Exhibit C16-5, Guthrie Final Argument page 2

³¹ Exhibit C21-10 BCOAPO Final Argument page 14

³² Exhibit C24-19 CEC Final Argument page 15

A situation such as the one proposed by the MEMPR could cause EVCS owners and operators confusion and be costly with respect to compliance, paradoxically creating a monopoly or oligopoly situation for entities well positioned to manage regulatory compliance, such as incumbents and public utilities. It can be a significant barrier to investment, especially when owners and operators have EVCS of varying levels at the same site or within the same network. For example, Level 2 stations are often co-located with DCFC stations. In these cases, the EV charging services provided by the owner or operator would be regulated by two separate processes, which would create a regulatory burden for both DCFC and Level 2 EVCS. In addition, this reasoning ignores that the three levels of EVCS are substitutes for one another, allowing for price discipline even absent competition in relation to one class of service. For example, Drive Energy recommends.³³

47. The CEC submits that this is an important point and recommends that the Commission provide significant weight to this evidence.

48. The CEC also agrees with ChargePoint that there is no requirement for the Commission to ‘protect³⁴’ customers given the early stage of market development. ChargePoint states:

‘The Commission should reject the views of participants who suggest that EVCS customers require the same protection from an electric utility providing a monopoly service, and have confidence that the absence of a natural monopoly and market power circumstances allow the Commission to conclude the UCA is not triggered.’³⁵

49. Tesla and others point out that charging services are governed under a wide range of consumer protection legislation and regulation, competition law, electrical safety codes, zoning and utility approvals.³⁶

50. The CEC submits that the existing protections and regulations are sufficient to provide adequate customer protections. The CEC submits that market forces will encourage increased competitive entrants where profits are available and entry is not deterred by artificial barriers to entry such as excessive regulation.

Commission Should Not Regulate Use

51. The CEC submits that it is also appropriate for the Commission to recognize that EV charging services constitute an end-use, which is generally not regulated by the Commission.

52. Guthrie provides a concise opinion:

³³ Exhibit C25-10 ChargePoint Final Argument page 10

³⁴ Exhibit C15-5, Greenlots Final Argument page 3

³⁵ Exhibit C25-10, ChargePoint page 7

³⁶ Exhibit C28-6 Tesla Final Argument page 11

‘BCUC’s regulatory focus should be on the generation, distribution and rates – SOURCE – of electricity. The USE of the electricity should not be covered by the ACT. EVSE provision by third parties is a USE and should be exempt.’³⁷

53. The CEC supports this view.
54. In conclusion, the CEC submits that in principle the BCUC should not regulate any level of EV charging services. The CEC submits that DCFC, along with Level 1 and Level 2 charging should be exempted from regulation altogether in the long run by way of changing the definition of public utility.

Short-Term and Long-Term Regulation

55. The CEC appears to be the only intervener who distinguished between short-term and long-term regulation.
56. The CEC recognizes that the Commission does not have jurisdiction to alter the definition of public utility, and accordingly must address the immediate concerns of EV charging service providers and prospective providers as well as many other interested parties and stakeholders.
57. The CEC recommends that the Commission immediately make clear that it will apply very light-handed regulation on an equitable basis to all participants in order to provide confidence to the market that there will not be significant regulatory barriers to be addressed.

IV. PARTICIPATION BY ENTITIES THAT ARE PUBLIC UTILITIES

58. The CEC notes that several interveners favour utility participation, frequently as a means to ‘kickstart’ the market but generally favour a cautious approach to interfering in the market’s development. These include MEMPR,³⁸ BCOAPO,³⁹ Greenlots,⁴⁰ BCSEA,⁴¹ City of Vancouver,⁴² ChargePoint,⁴³ and Tesla⁴⁴ among others.
59. For instance, Greenlots states:

‘Greenlots agrees with FortisBC that cross-subsidization risk “needs to be balanced against the need to develop the EV market, to support government policy, and the

³⁷ Exhibit C16-5, Guthrie Final Argument page 4

³⁸ Exhibit C19-10 MEMPR Final Argument page 6

³⁹ Exhibit C21-10, BCOAPO Final Argument page 14

⁴⁰ Exhibit C15-5, Greenlots Final Argument page 3

⁴¹ Exhibit C-14, BCSEA Final Argument pages 38-39

⁴² Exhibit C5-7, CoV Final Argument pages 9 -11

⁴³ Exhibit C25-10 ChargePoint Final Argument page 11

⁴⁴ Exhibit C28-6 Tesla Final Argument page 8

potential for net benefits to be provided to other rate classes” and that “the issues pertaining to rate design and cross-subsidization should be revisited after 5-10 years when some of these variables become clearer than what exist today.” At this point, what seems to be most important is accelerating the EV market in support of provincial GHG reduction and climate action goals, and existing law and regulation as defined in the CEA and GRR provide a mechanism and pathway for this to occur.⁴⁵

60. BC Hydro is of the view that ‘participation by entities like itself and Fortis in the EV sector is essential to (the EV sector’s) success.⁴⁶
61. BC Hydro itemizes several of its perceived benefits at pages 13 and 14 of its Final Argument.
62. These include:
 - More fast charging service is likely available than would otherwise be provided by the private sector given current economics and regulatory barriers;
 - The pace and scale of infrastructure development would likely be increased by opening the market to utility capital and expertise;
 - Institutional knowledge and the management of grid and systems operations can be leveraged which could assist in the planning of the location of stations, among other things;
 - Customer-service expectations can be managed efficiently through the use of existing customer communication channels which can in turn foster the development of customer pricing models and create incentives that promote vehicle charging at times that provide grid benefits; and
 - The potential reduction in customer rates by spreading fixed distribution costs over more electricity demand.⁴⁷
63. The CEC does not agree that the market could not develop independently, and submits that indeed it is possible that it could develop more quickly in the absence of utility participation and BCUC regulation.
64. The CEC does accept BC Hydro’s list of potential benefits and submits that participation by public utilities could potentially be beneficial in terms of establishing charging services in certain remote, less profitable areas, than might otherwise receive service under certain conditions.

⁴⁵ Exhibit C15-5, Greenlots Final Argument page 3

⁴⁶ Exhibit C1-5, BC Hydro Final Argument page 13-14

⁴⁷ Exhibit C1-5, BC Hydro Final Argument page 13-14

65. However, utility participation also carries the significant risk of inhibiting the development of the competitive market rather than developing it, depending on the prices charged, the regulatory format, cross-subsidies, asymmetric costs or other burdens faced by potential competitors, and other factors.
66. Additionally, utility participation at the early stage can result in the utilities developing a significant advantage in terms of first in benefits, name recognition, experience and other. Such advantages can further suppress competitive entrants and result in the creation of a monopoly-like presence.
67. The CEC submits that it is imperative that any participation by public utilities be established in such a way as to avoid cross-subsidizations or any asymmetric subsidies for utilities that are not equally available to competitive market entrants.
68. The CEC's view on 'kickstarting' the market is that any kickstarting should be planned for a defined period of time and should be phased out in favour of competitive market development.

V. REGULATION FOR ENTITIES THAT ARE PUBLIC UTILITIES

69. From a ratepayer perspective, the CEC is of the view that public utilities should not participate in the EV charging services market through a regulated utility with the costs included in ratebase. Such a situation could require ratepayers to subsidize EV charging services for EV owners, unless all the costs are collected and clearly transferred to the EV service provided by these utilities and thereby to the EV charging service customers.
70. BCOAPO points out some of the inherent risks of public utility participation at page 15 of their Final Argument. They state:

However, BCOAPO respectfully disagrees with BC Hydro's view 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 entities. 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 Hydro has acknowledged this point. BCOAPO also notes that CEC appears to share its concerns in this regard.

71. The CEC agrees with this position.

72. The CEC submits that to the extent that public utilities are permitted to participate in the EV charging service market, it would be preferable for them to participate in an unregulated business. This would minimize the risk of cross subsidization and provide the greatest opportunity for a competitive market to develop and would limit regulatory expenses.

73. CEABC is of the view that:

FBC should be allowed to participate in the Charging Services market as owners or operators of EV charging stations on a non-regulated basis provided the required electricity for the provision of the Charging Services by the non-regulated utility entity is acquired on an arms-length basis from the parent regulated utility. It should not be permitted to invest in the Charging Services market as a prescribed undertaking under section 18 of the *Clean Energy Act* and section 4 of the GGRR except as described below. There is no need to provide a guaranteed rate of return for Charging Services to FBC. If it chooses to enter this market it should receive the market rate of return for the risk it takes.⁴⁸

74. The CEC submits that it would be appropriate for a public utility participating in the market as an unregulated business to receive similar, light handed regulation as that provided to any other participant deemed to be a 'public utility' under the UCA.

75. CEABC points out that BC Hydro's participation is problematic in that BC Hydro claims that no return on equity is required. Accordingly, 'the 'charging services market will be distorted if BC Hydro participates in it on a no return on equity basis whereas all other participants will be expecting a return on equity for the risk they take.'⁴⁹

76. The CEC agrees that BC Hydro participation could be problematic in creating artificially low pricing, distorting markets and hindering the maturation of a competitive market. The CEC submits that participation by the public utilities in a competitive market carries risk of market distortion and that any 'kick starting' should be established for a limited duration and phased out over a period of time.

77. CEABC proposes that:

In areas of the Province that cannot support Charging Services on a commercial basis, regulated utilities including BC Hydro and third parties could make application to the BCUC to provide these services on a regulated basis. The onus would be on these parties to prove the competitive market is not, or will not work as opposed to assuming that it will not work and a guaranteed rate of return provided for whatever capital investment is made. The no return on equity problem could be dealt with by the BCUC on a case by case basis.⁵⁰

⁴⁸ Exhibit C2-2 CEABC Final Argument page 4

⁴⁹ Exhibit C2-2, CEABC Final Argument page 4

⁵⁰ Exhibit C2-2 CEABC page 5

78. The CEC is not averse to this proposition.
79. MEMPR favours including EV charging stations in a public utility's rate base 'until the EV charging market is further developed'. They state that this view is consistent with the approach taken in other jurisdictions, including California, Hawaii, New York and Washington State.⁵¹
80. The CEC submits that such an approach would require careful management to ensure that market development is not impeded by utility participation and a proper analysis to identify the criteria by which the Commission could determine when the market is sufficiently 'further developed'.
81. The CEC notes that several interveners do not appear to distinguish between utility participation in the form of an unsubsidized, unregulated entity, vs the form in which the utility participates through its regulated entity, with costs being included in rate base.
82. The CEC submits that, with the exception of interveners who frequently participate in BCUC proceedings,⁵² the interveners who have discussed utility participation, have most often assumed utility participation under a regulated utility. The CEC considers that this could lead to some confusion with regard to wording. For example, the term 'unregulated' could be interpreted by some interveners to mean no, or limited regulation being applied to a regulated utility, rather than a utility operating as a competitive business.
83. Working under this assumption, the CEC submits that those interveners favouring significant regulation for utilities have typically requested that much regulation in order to avoid detrimental effects on the development of the competitive market and/or the prevention of cross-subsidization. The CEC submits that this position is generally that expressed by most interveners who favour utility participation.
84. To the extent that public utilities are permitted to participate in a regulated utility, the CEC agrees with the interveners that the utility should be regulated with full regulation and in such a way as to avoid a situation of asymmetrical subsidies that favour utilities and disadvantage non-utility competitors.
85. The CEC agrees with BCOAPOs recommendation cited above that 'if public utilities become involved in providing EV charging services as part of their 'regulated business', the rate for service should be a market rate.⁵³

⁵¹ Exhibit 19-10 MEMPR page 6

⁵² eg. BC Hydro, Fortis, CEABC, BCOAPO, CEC

⁵³ Exhibit C21-10, BCOAPO Final Argument page 15

86. The CEC also agrees with BCOAPO 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.⁵⁴

VI. BCUC STRAWMAN

87. The CEC reiterates its position that EV charging services should be de-regulated by modifying the altering the definition of public utility, and recommends that the Commission request the provincial government to make a change to the definition of public utility to exclude EV charging services.

88. As noted above, the CEC submits that the BCUC proposed strawman has largely been viewed with respect to DCFC charging. The CEC submits that the immediate implementation of light-handed regulation would likely legally apply across all EV charging public utilities that are not otherwise public utilities.

89. The CEC recommends that the Commission immediately apply very light-handed regulation for all EV charging services to the extent these may be viewed as public utilities, the essence of which can be communicated to prospective market participants.

90. The BCUC strawman proposed exemption from Part 3 of the UCA, with exceptions of Sections 25, 26, 38, 42, 43, 44 and 49.

91. The CEC provided its views of the proposed strawman in its Final Arguments at pages 24-32 and stands by this analysis and this position.

92. BC Hydro recommends that Section 24 should be included in the list of enumerated exceptions to the general exemption from Part 3 'so that the Commission may conduct enquiries and keep itself informed about the EV sector as necessary'.⁵⁵

93. The CEC also identified Section 24 for potential inclusion. The CEC agrees with BC Hydro and submits that section 24 applies to the Commission and provides significant discretion to the Commission as to the timing and depth of inquiries the Commission is required to make. The CEC submits that the Commission can provide significant assurance to prospective participants that any inquiries can be managed to avoid interfering with standard business practices while still preserving the right for the Commission to keep itself informed.

94. Several interveners identified Section 26, Commission may set standards, as a potential area of concern as it was not excluded in the Bakerview EcoDairy decision. MEMPR posits that

⁵⁴ Exhibit C21-10, BCOAPO Final Argument page 15

⁵⁵ Exhibit C1-5, BC Hydro Final Argument page 15

the inclusion of Section 26 could result in the Commission setting equipment, hardware or software standards for DC fast charging stations that would be premature.⁵⁶

95. The CEC submits that regulation in this area could be undertaken on a complaint basis and need not interfere with market technology development.

VII. REVISIT EXEMPTION FRAMEWORK IN FIVE YEARS

96. The City of Vancouver and others propose to re-examine the exemption framework in five years. The City of Vancouver states:

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

- a) the efficacy of the regulatory approach,
- b) the competitive state of different segments of the EV charging market and the need for regulation,
- c) the rate of EV adoption in different parts of the province, and
- d) whether any adjustments to the regulatory approach are necessary to adapt to the circumstances of the EV charging market’.⁵⁷

97. The CEC’s view is that a five-year limit to exemption should not be utilized as a means to rationalize ongoing regulation, and could potentially be counter-productive to market development in continuing a level of uncertainty for prospective market entrants.

98. The CEC recommends that the Commission recommend to the province that it clearly remove EV charging service from regulation completely through revising the definition of public utility, and avoid using a five year time frame.

VIII. CLEAN ENERGY ACT AND GREENHOUSE GAS REDUCTIONS REGULATION

99. The CEC provides its view of the statutory interpretations of Section 18 of the *Clean Energy Act* and section 4 of the GRR BC Reg 102/2012 in its Final Arguments at page 2.

100. The CEC submits that the interpretation supports the inclusion of EV charging services as a prescribed undertaking.

101. MEMPR notes that the current language of section 4 of the GRR is not directed specifically at EV charging infrastructure but enables various classes of electrification as prescribed undertakings. They point out that FortisBC Inc.’s application for EV charging rates suggests

⁵⁶ Exhibit C19-10 MEMPR Final Argument page 5

⁵⁷ Exhibit C5-7, CoV Final Argument page 2

that the EV Charging investments are prescribed undertakings and suggest that the Commission consider these arguments.⁵⁸

102. MEMPR has suggested that changes to the GRR regulations could enable prescribed undertakings as a means of kick-starting the market with EV DC Fast Charging infrastructure.⁵⁹

103. FortisBC submits that:

‘given the state of the emerging EV market, EV charging stations are prescribed undertakings section 4 of the GRR, 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. EV charging service (unless otherwise exempted from the UCA) is clearly a public utility activity if electricity is being provided for compensation⁶⁰.

104. BC Hydro provides its review of the Greenhouse Gas Reduction (Clean Energy) Regulation at pages 9-12 of their Final Argument.

105. BC Hydro points out that the CEA Section 18 and the GRR are permissive, in that they do not require any person or entity to engage in prescribed undertakings. Rather:

‘the scheme of CEA section 18 is that if an entity is a "public utility", and if the public utility entity engages in a prescribed undertaking, then two legal consequences follow:

- a) under CEA subsection 18(2), the Commission is obliged to allow the public utility to recover the costs of the prescribed undertaking in the public utility's rates - this would normally and conveniently happen in a public utility's revenue requirement proceeding; and
- b) the Commission may not, "directly or indirectly" exercise a power that would prevent the utility from engaging in the prescribed undertaking - among other things, this would preclude the Commission from requiring a public utility to obtain a certificate of public convenience and necessity (“CPCN”), and would oblige, where applicable, the Commission to approve a rate in respect of a prescribed undertaking that is a service offering for which a rate needs to be filed and approved in accordance with the UCA.⁶¹

106. They conclude that:

In summary, the GRR currently has relatively little application to the EV charging sector. Public utilities that provide EV charging services on a research and

⁵⁸ Exhibit C19-10, MEMPR Final Argument page 7

⁵⁹ Exhibit C19-10, MEMPR Final Argument Page 7

⁶⁰ Exhibit C12-4, FBC Final Argument page 5

⁶¹ Exhibit C1-5, BC Hydro Final Argument page 10

development basis, or a pilot basis, are assured of being able to recover the costs of the service in rates, and cannot be compelled by the Commission to seek a CPCN (for example). The GRR applies to all EV service providers that are public utilities, and not just those who are otherwise public utilities – but for those who are not otherwise public utilities it does too little to remove the regulatory burden.⁶²

107. They summarize their views as follows:

BC Hydro attaches Proposed Recommendations to Government in Appendix B to their Final Argument. They propose that the Commission recommend to the Province the following amendment to Section 4 of the Greenhouse Gas Reduction (Clean Energy) Regulation:

(5) 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) the public utility constructs or operates an electric vehicle charging station.⁶³

108. Conversely, CEABC disagrees that they specifically permit BC Hydro and FBC to invest in EV charging stations. They state:

There is nothing in the section 18 of the *Clean Energy Act* and section 4 of the GRR that the CEABC can identify as specifically permitting BC Hydro and FBC to invest in EV charging stations as a prescribed undertaking under section 18 of the *Clean Energy Act* and section 4 of the GRR. There is no specific language to this effect as compared to the specific language in subsection (2) of section 4 including the definition of “natural gas processing plant” in subsection (1) of section 4.⁶⁴

109. The CEC submits that the prescribed undertakings provide a significant issue in that utility participation under ratebase has the potential to seriously disrupt and delay the maturation of a competitive EV charging market as discussed above.

110. The CEC submits that any use by the utilities of implicitly prescribed undertakings for kick-starting the DC Fast Charging infrastructure should be limited and designed to be phased out into a full market structure as the market matures from the early stage of development.

111. The CEC recommends that the Commission recommend to the Province that changes to the prescribed undertaking be made so that it is clear that EV charging is not a prescribed undertaking in order to avoid impacting the emerging competitive market.

⁶² Exhibit C1-5 BC Hydro Final Argument page 12

⁶³ Exhibit C1-5, BC Hydro Final Argument Appendix B

⁶⁴ Exhibit C2-2, CEABC Final Argument page 4

IX. CONSISTENCY WITH OTHER JURISDICTIONS

112. Tesla points out in its Final Arguments that:

If the BCUC were to regulate EVCSs as public utilities, it would be the only jurisdiction in North America to do so. It would also be contrary to the direction that Ontario has proceeded on this matter. Canadian provinces should implement consistent policies across the country to allow for even infrastructure development of long range travel support networks. BCUC's current direction flies in the face of progress. It is also contrary to a contextual and reasoned interpretation of the UCA.⁶⁵

113. The CEC agrees that it would be beneficial if Canadian provinces were able to implement consistent policies across the country.

114. The CEC submits that this may be another valid reason for why the Commission should provide an immediate recommendation to government to alter the definition of public utilities to exclude EV charging from entities that are otherwise not considered public utilities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

David Craig

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⁶⁵ Exhibit C28-6 Tesla page 7