

**REPLY SUBMISSION ON BEHALF OF**

**THE CLEAN ENERGY ASSOCIATION OF  
BRITISH COLUMBIA (“CEABC”)**

**BRITISH COLUMBIA UTILITIES COMMISSION  
INQUIRY INTO THE REGULATION OF  
ELECTRIC VEHICLE CHARGING SERVICE**

**Project No. 1598941**

**August 22, 2018**

## Introduction

Set out below are the Clean Energy Association's ("CEABC") selective responses to the final arguments of some of the interveners in the British Columbia Utilities Commission ("BCUC") Inquiry into the Regulation of Electric Vehicle Charging Service. They are arranged in alphabetical order. The CEABC's silence on any matter raised by an intervener does not constitute agreement or acceptance.

## BC Hydro ("BCH")

Except with respect to the term "generally" the CEABC agrees with BCH's position that<sup>1</sup>:

*"Regardless of the scope of the GGRR [Greenhouse Gas Reduction (Clean Energy) Regulation] entities that provide EV charging services and are not otherwise public utilities should generally be exempt from regulation under the UCA [Utilities Commission Act (B.C.)]..."*

Investors need legal certainty before they risk their capital in electric vehicle charging services ("Charging Services", "Level 1, 2 and 3" or sometimes in the case of the later "DC Fast Charging") and in particular DC Fast Charging. Arguments can be made that the provision of free Charging Services are not subject to regulatory oversight or that the GGRR in certain circumstances may provide the same outcome. Converse arguments can also be made. However it should not be necessary to make arguments. The certainty should be provided in law.

To the extent it is BCH's position that amending the GGRR will provide a suitable legal solution to the current uncertainty, the CEABC does not agree with it. The main purpose of the GGRR is to allow the Provincial Government to set out prescribed undertakings which public utilities may choose to carry out to reduce greenhouse gas emissions while recovering the cost in rates. Essentially removing the BCUC's authority to regulate activities undertaken by entities that would otherwise be subject to the BCUC's full oversight. It would be an awkward and obscure place to provide exemptions from regulation for entities that provide Charging Services but who are otherwise not public utilities under the UCA. For these entities, greenhouse gas reduction is incidental to exemption from regulation because they provide Charging Services.

"EV Charging Guidelines" as proposed by BCH would not solve the exemption problem. Guidelines are not legally binding and are not enforceable.

The appropriate mechanism that the BCUC could use to provide an exemption from regulation is found in sections 88(1) and/or (3) of the UCA. Other interveners have covered this topic in depth and the CEABC has nothing to add. The BCUC could also recommend that the minister responsible for BCH grant an exemption pursuant to section 22 of the UCA. The CEABC's concerns about the reservation of regulatory oversight in the BCUC's straw man proposal apply equally to a section 22 ministerial exemption order.

Also, the CEABC does not agree with BCH's assertion that<sup>2</sup>:

*"...Moreover in BC Hydro's submission, the participation of entities like itself and Fortis in the EV sector is essential to its ultimate success."*

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<sup>1</sup> Exhibit C1-5, page 2, paragraph 3

<sup>2</sup> Exhibit C1-5, page 13, paragraph 25

As noted in the CEABC's Final Submission/Argument<sup>3</sup>, a competitive Charging Services market should be allowed to develop and if any gaps in service arise, entities of all types should be allowed to fill these gaps on a regulated basis after first applying, and receiving, BCUC approval. There should be competition to provide any required services and it should not be ceded to the incumbent existing regulated utilities such as FortisBC and BCH.

While municipalities are unregulated<sup>4</sup> and their participation in a competitive EV market will distort it because of their tax exempt status, for the most part their returns on investment will be market based (e.g. if they choose the appropriate amortization period, pick the correct technology and there is no material change in competing technologies during the amortization period and accurately forecast demand they may recover their investment and a reasonable rate of return.) Because they are unregulated they won't bear the burden of the cost of regulation, including those that would result under the BCUC's straw man proposal, but neither will they be entitled to a regulated rate of return on their investment or regulatory protection if their investment results in stranded assets.

Finally, the CEABC does not agree with BCH's position that<sup>5</sup>:

*"In light of the foregoing, BC Hydro submits that with one caveat, the proposed exemption order is appropriate. In particular, the proposed exemption order lists a number of exceptions. One exception should be UCA section 24, which obliges and empowers the Commission to make enquires regarding public utilities. 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 section as necessary."*

As noted in the CEABC's Final Submission/Argument all the references to the UCA in the straw man proposal are unnecessary. And there is certainly no need to add a reference to section 24.

### **B.C. Sustainable Energy Association and Sierra Club BC ("BCSEA-SCBC")**

The CEABC agrees with the BCSEA-SCBC position that<sup>6</sup>:

*"EV charging services provided by entities excluded from the definition of "public utility" [For example municipalities, regional districts, employers to employees and landlords to tenants.] in the UCA are already not regulated by the Commission and in the BCSEA-SCBC's view should remain unregulated."*

Although the tax exempt status of municipalities and regional districts may give these entities an unfair advantage in a competitive market, the CEABC does not believe it will result in a material tilting of the playing field - unless these entities provide Charging Services on a Province wide basis. However there is no evidence of this intent.

Otherwise the CEABC has the same concerns about the BCSEA-SCBC's positions that it does about some of the other interveners. There is a reluctance, by degrees, to allow a competitive market to develop. Which means keeping the playing field as level as possible. Then, if such a market does not develop, the

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<sup>3</sup> Exhibit C2-2

<sup>4</sup> UCA, Section 1, definition of "public utility"

<sup>5</sup> Exhibit C1-5, page 15, paragraph 33

<sup>6</sup> Exhibit C6-14, page 4, paragraph 4

Provincial Government can use its legislative authority to intervene, either directly, or indirectly through the BCUC. There is no need to have this authority in place today as it can be created if needed. For example the BCSEA-SCBC asserts<sup>7</sup>:

*“BCSEA-SCBC recommend an exemption from Part 3 except s. 42, 43 (omitting s. 43(1)(i)), and 44, with no residual authority clause, directions, registration requirement or annual report requirement. This is similar to the Micro TES and Strata owned TES exemption models.”*

While an improvement in terms of reductions in exceptions from the BCUC straw man proposal, there is no need to include the above exceptions in a Section 88 or 22 exemption order. It is an unnecessary abundance of caution.

### **ChargePoint**

The CEABC agrees with ChargePoint’s main points<sup>8</sup>:

*“The market may be young, but it does not present natural monopolies. Consumers have choices and options in BC that can and will discipline charging providers. Some parts of the market may not have a strong economic case at this stage, but that is due to capital costs associated with that infrastructure. The Commission should encourage subsidies, rather than regulation, to promote the adoption of this technology.*

*Commission “protection” at this stage would bias and distort the market rather than support it. Advantaging incumbents by creating regulatory and investment barriers for subsequent entrants will lessen the positive effects of market competition, which include customer choice, competitive service and pricing, and more innovative service offerings.*

*Other regulatory authorities deal with tenants, strata co-owners, consumer protection, electrical standards safety and metering, and there is no need for the Commission to usurp or duplicate their functions.”*

The CEABC would place caveats on ChargePoint’s comments about subsidies. It is not the BCUC’s role to encourage subsidies and they can be equally distorting to the development of a competitive market as anything else. They must be fairly and transparently provided. For areas of the Province that don’t have a strong economic case for Charging Service of any type, the CEABC would prefer to see these services provided on regulated basis with existing regulated incumbents and new regulated entrants dealt with on an equal regulatory footing.

### **Commercial Energy Customers (“CEC”)**

The following observations made by the CEC highlight some of the distortions that will occur if regulated and non-regulated entities participate in the same Charging Services market<sup>9</sup>:

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<sup>7</sup> Exhibit C6-14, page 7, paragraph 10

<sup>8</sup> Exhibit C25-10, pages 3 and 4

<sup>9</sup> C24-19, pages 17 and 18, paragraphs 102-104

*“The CEC notes the additional issue that if various service providers become regulated utilities and are not exempted from various aspects of regulation, the entities would also receive the benefits conferred upon the utility from the UCA.*

*Should the Commission provide price regulation under the UCA, service providers will be entitled to a regulated rate of return, plus recovery of their prudently incurred expenditures. The CEC notes that the allowed ROE for FortisBC Inc. is 9.15%, which is considerably higher than many competitive businesses achieve.*

*The CEC does support full regulation for “otherwise” public utilities (i.e. electric utilities) if they are providing subsidized EV charging services under rate base regulation and the same regulation for the market if they are providing the service through non-regulated businesses. The CEC considers this regulation necessary to ensure costs are contained and there is no cross-subsidization from utility ratepayers.”*

When there are regulated and unregulated participants in the same market, it will be distorted. The regulated participants will be entitled to a regulated rate of return and recovery of incurred expenditures but the non-regulated participants will not. The CEABC’s proposed solution is that if there is a market failure then all parties must be given an opportunity, if they choose to do so, to provide Charging Services on a regulated basis. And not just current regulated incumbents such as BCH and Fortis. Otherwise, Charging Services should be provided on a non-regulated basis.

#### **Ministry of Energy Mines and Petroleum Resources (“MEMPR”)**

The CEABC supports MEMPR’s position that<sup>10</sup>:

*“MEMPR supports the concept of an exemption from provisions of the UCA for entities not otherwise public utilities that are providing EV charging services...”*

However the CEABC does not agree with the distinction MEMPR draws between Level 1 and 2 charging services and DC Fast-Charging. The former would be exempt from regulation but in relation to the later<sup>11</sup>:

*“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.”*

It goes on to say<sup>12</sup>:

*“...In this early market development stage, it may be difficult for service providers to achieve a positive return on their DC fast-charging investments.”*

It is difficult to understand how light-handed regulation of DC Fast Charging service providers would assist these providers in achieving a positive return. Assuming that light-handed regulation does not

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<sup>10</sup> Exhibit C19-10, page 3, paragraph 13

<sup>11</sup> Exhibit C19-10, page 5, paragraph 20

<sup>12</sup> Exhibit C19-10, Page 5, paragraph 21

include regulation of the rate of return. To the contrary, light-handed regulation would add to the cost of providing DC Fast Charging and reduce the chances of achieving a positive rate of return.

The CEABC agrees with the MEMPR's specific concern that it is not necessary to include a reference in the straw man proposal to section 26 of the UCA. It is not necessary because of the evolutionary and possible proprietary nature of HVDC charging technology. For the former reason, the CEABC does not understand how a clear and lasting distinction can be made between Levels 1, 2 and 3 Charging Services. Because of technological advances it may be possible in the near future to use alternating current technology to quickly charge a vehicle and/or the cost of direct current charging may fall dramatically through economies of scale. The assumption being made by MEMPR is that the existing differences between Levels 1, 2 and 3 Charging Services are going to remain.

The CEABC assumes that MEMPR is not suggesting that the straw man proposal be applied to Level 1 and 2 Charging Services. As noted in the CEABC's Final Submission/Argument, all the references to the UCA in the straw man proposal are unnecessary including section 26. A competitive market should be allowed to evolve before any remedial action is contemplated by the BCUC or the Provincial Government.

Similarly the CEABC does not support the MEMPR's following assertions<sup>13</sup>:

*"...As noted in our evidence submission, MEMPR supports a role for public utilities in "kick-starting" the market for EV charging services."*

*"Until the EV charging market is further developed, MEMPR's view is that EV charging stations should be included in a public utility's regulated rate base..."*

Kick-starting could result in the permanent disappearance of non-public utilities from all levels of the Charging Services market.

For the purposes of non-public utility participation in the Levels 1 and 2 MEMPR's position is that no regulation is required including a rate of return. For Level 3, it is not opposed to some light-handed regulation but not including a rate of return. In contrast, for public utilities, MEMPR's position is that investment in all levels should be included in regulated rate base. In aggregate these positions will not lead to the development of a competitive EV charging market because the playing field isn't level as between public and non-public utilities.

### **Tesla Motors Canada ULC ("Tesla")**

The CEABC agrees with Tesla's position that<sup>14</sup>:

*"...The regulated utilities could also potentially play a limited, but meaningful role in EVCS development in less competitive areas such as remote and rural communities and in multi-unit dwellings, if development does not occur through competitive methods..."*

It is consistent with the CEABC's view that a competitive market should be allowed to develop with Provincial Government intervention to fill in any gaps.

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<sup>13</sup> Exhibit C19-10, page 6, paragraphs 27 and 28

<sup>14</sup> Exhibit C28-6, page 8

The CEABC also agrees with Tesla’s observations about the references to sections 25, 26, 38, 42, 43, 44, and 49 in the BCUC’s straw man proposal. They would be an unnecessary regulatory burden on entities that are supposed to be otherwise exempt from regulation.

**Vancouver Electric Vehicle Association (“VEVA”)**

The CEABC agrees with VEVA’s position that the straw man proposal should be redrafted to exclude the current multitude of regulatory oversight inclusions<sup>15</sup>. It should also be made clear that section 71 of the UCA does not apply to Charging Service providers except those that are public utilities.

All of which is respectfully submitted by the Clean Energy Association of B.C.

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<sup>15</sup> Exhibit C30-8, page 6