

BRITISH COLUMBIA UTILITIES COMMISSION

Inquiry into the Regulation of Electric Vehicle Charging Service, Phase Two

Evidence

by

BC Sustainable Energy Association and Sierra Club BC

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1.0 Introduction

This is the evidence of the interveners BC Sustainable Energy Association and Sierra Club BC (BCSEA-SCBC) in Phase Two of the Commission’s Inquiry into the Regulation of Electric Vehicle Charging Service, pursuant to Order G-231-18¹ and the amended regulatory timetable of December 18, 2018.² This evidence responds to the fourteen groups of questions set out in the Commission’s Phase 1 report.³

BCSEA-SCBC’s overarching position is that the Commission’s approach to the regulation of EV charging services should be designed to foster the rapid development of electric vehicles in all B.C. transportation sectors, including passenger, light commercial and heavy duty. Encouraging the adoption of EVs in substitution for fossil-fuel vehicles is in the public interest and consistent with the B.C. energy objectives under the *Utilities Commission Act* and the *Clean Energy Act*.

BCSEA-SCBC believe that during the development of the EV sector in B.C. the Commission should allow BC Hydro and FBC to play an active role in delivering public DCFC services, and that the Commission should adopt a lighted-handed regulation approach to public DCFC services by BC Hydro and FBC.

2.0 BCSEA-SCBC Responses to the 14 Groups of Questions

In Appendix A of Order G-231-18, the Commission sets out 14 groups of questions under four headings. The introduction states:

“On January 12, 2018, the British Columbia Utilities Commission (BCUC) established an Inquiry into the regulation of electric vehicle (EV) charging service (Inquiry). On November 26, 2018, the BCUC issued the Phase 1 Report. In the Phase 1 Report, the Panel recommends that the Minister of Energy, Mines and Petroleum Resources issue an exemption of with respect to BCUC’s regulation of EV charging services [by entities that are not otherwise regulated public utilities and that in providing EV charging services meet the definition of public utility under the UCA] but that the BCUC retain oversight on safety.

¹ Exhibit A-37.

² Exhibit A-38.

³ https://www.bcuc.com/Documents/Arguments/2018/DOC_53093_2018-11-26-PhaseOne-Report.pdf.

Phase 2 of the Inquiry will focus on the regulatory framework for EV charging service providers that ... have not been recommended for exemption (e.g. BC Hydro and FortisBC Inc.) (non-exempt public utilities).”

The primary focus is on EV charging services provided by BC Hydro and FBC, referred to in Appendix A as “non-exempt public utilities.” For clarity, BCSEA-SCBC will substitute “BC Hydro and FBC” for “non-exempt public utilities” in their responses to the Phase 2 questions. This confirms that their responses do not address the theoretical possibility of DCFC service being provided by some other fully regulated public utility, such as FEI (gas), PNG (gas), or large district energy systems.

In questions 1 and 2, the regulatory framework for EVCS by BC Hydro and FBC is addressed in contradistinction from the regulatory framework for EVCS by “exempt public utilities.” This is a reference to EV charging services by entities that are not otherwise regulated public utilities and that in providing EV charging services meet the definition of public utility under the UCA as described by the Panel in the Phase 1 report. As noted in the introduction to Appendix A, this category is the subject of the Commission’s recommendation to the Minister for a partial exemption from the definition of public utility that retains BCUC oversight regarding safety. For convenience, BCSEA-SCBC will refer to these exempt public utilities as being subject to “safety-only regulation” by the Commission, without intending to prejudge whether the Minister will accept the Commission’s recommendation. Also, although the term “exempt public utilities” is used, it is understood that these entities are not fully exempt; they are only partially exempt in that they would not be exempt from safety oversight by the Commission.

BCSEA-SCBC note that, in addition to EVCS by BC Hydro and FBC and by exempt public utilities, there is a third important category of EVCS, which is EV charging services provided by entities that are excluded from the definition of public utility. In particular, some 28 DCFC stations are operated by municipalities that are, presumably, excluded from the definition of public utility. Excluded EVCS providers are an important component of the supply of EV charging services to the public. This becomes relevant in terms of whether the Commission’s concern about how the regulatory framework for EVCS by BC Hydro and FBC affects other EVCS providers applies only to EVCS by exempt public utilities or also to EVCS by excluded providers.

This response focuses on the market for public DCFC service. It does not address Level 2 or Level 1 EV charging. And it does not address DCFC service that is not available to the public, such as fleet charging stations.

A. Regulatory framework for BC Hydro and FBC providing public DCFC service

By way of background, ownership of public DCFC stations in B.C. is in four categories:⁴

- BC Hydro (58 stations),
- FBC (5 stations),
- Tesla (10 stations), and
- “unknown businesses” (3 stations).

⁴ BCUC Staff Table 2: DCFC Public Stations in BC, BCUC EV Charging Phase One Report, pdf p.22.

In terms of the operator of DCFC stations, there are five categories:

- BC Hydro (operates 29 of its 58 stations),
- FBC (operates all 5 of its stations),
- municipalities (operate 28 DCFC stations owned by BC Hydro),
- Tesla (operates all 10 of its stations), and
- businesses (operate the 3 stations owned by businesses).⁵

Notably, the DCFC stations operated by Tesla and the “unknown businesses” are (partially) exempt public utilities as determined by the Panel in the Phase 1 Report (assuming the recommended Ministerial order is granted). DCFC stations operated by municipalities are not regulated under the UCA.⁶ And, whether and how DCFC stations operated by BC Hydro and FBC are to be regulated under the UCA is the subject of the first ten sets of questions.

1 (a) Can both regulatory models – little or no regulation for those exempt public utilities and the participation of non-exempt utilities – co-exist?

BCSEA-SCBC understand the question to be whether there can be co-existence between safety-only regulation of EVCS by exempt public utilities, on the one hand, and some yet-to-be-determined form of regulation under which BC Hydro and FBC actively provide DCFC services to the public, on the other hand. In BCSEA-SCBC’s view, both regulatory models can co-exist. There is no evidence that the provision of public DCFC service by BC Hydro and FBC harms exempt public utilities.

1.(b) In the absence of price regulation, how can EV charging providers that are not otherwise public utilities (which would be exempt from regulation in accordance with the Panel’s recommendation) be protected from being undercut by non-exempt public utilities?

BCSEA-SCBC interpret the question as being whether price regulation of DCFC service by BC Hydro and FBC is required in order to protect exempt public utilities providing EVCS from being undercut by BC Hydro and FBC.

BCSEA-SCBC’s response is that the Commission does not need to regulate the price (to EV drivers) of DCFC service by BC Hydro and FBC in order to protect exempt public utilities providing EVCS from being undercut by BC Hydro and FBC.

There is no evidence that a Commission-regulated price for BC Hydro and FBC DCFC service would necessarily be lower than the price an exempt public utility would set for its EV charging service.

Further, there is no evidence that even if a Commission-regulated price for BC Hydro and FBC DCFC service was lower than the price an exempt public utility would set for its EV charging service there would be “undercutting” (i.e., harm to the exempt public utility). Most public EV charging stations, and certainly DCFC stations, are too far apart from each other to compete on price.

⁵ In addition, Bakerview Ecodairy operates one of the DCFC stations owned by BC Hydro.

⁶ Presumably, DCFC stations owned by BC Hydro and operated by municipalities come under BCUC oversight regarding BC Hydro’s costs and revenues associated with ownership of the DCFC equipment; but the operation of the stations is not regulated by the BCUC.

The theoretical example of a ‘mom and pop’ public EV charging station across the street from BCH or FBC EV charging station⁷ does not exist in practice, because there is no positive business case for a non-subsidized commercial EV charging station regardless of whether there is a BCH or FBC station across the street. Even in urban areas, the EV charging market is years away from being large enough to support financially self-sufficient public EV charging stations.⁸

BCSEA-SCBC’s view is that when the EV and EV charging markets have matured sufficiently the time will be ripe for the Commission to determine whether the presence of BC Hydro and FBC in the public DCFC market is appropriate in terms of economic regulation under the UCA.

1 (c) Should non-exempt public utilities be restricted to participate only in remote geographical locations that are currently uneconomical for exempt EV charging providers to serve?

No. BC Hydro and FBC should not be restricted to participate only in remote geographical locations. Limiting BC Hydro and FBC to providing EV charging services only in remote geographical locations would defeat the underlying purpose of BC Hydro and FBC providing EVCS in order to kick-start the EV sector. In addition, as noted above, the evidence is that it is currently uneconomic for exempt public utilities to provide EVCS (without external subsidy) in any area of the Province.

2. (a) If the provision of EV charging is exempt from regulation, is there any justification for non-exempt public utilities to provide EV charging services?

This question is understood to echo the Panel’s discussion in the fourth paragraph on page 47 of the Phase 1 Report. In that paragraph, the Panel addresses the argument by certain interveners that EV charging service should not be considered a public utility service under the UCA. If that argument had been accepted, then EVCS, even by BC Hydro and FBC, would not be regulated under the UCA. The Panel implicitly points out that if EVCS is not a regulated service under the UCA then BC Hydro and FBC providing EVCS would be akin to them operating a department store (i.e., not a regulated service). The implication is that it would be difficult to justify BC Hydro and FBC providing EVCS if EVCS, like operating a department store, is not a regulated service under the UCA.

In the result, however, the Panel in the Phase 1 Report rejected the argument that EVCS is not, or should not be, a regulated service within the definition of public utility in the UCA. Instead, the Panel went in the opposite direction, and interpreted “public utility” to not only include the provision of EV charging services but also to include EVCS provided under a broad interpretation of “for compensation.” Accepting that determination, the premise of the first question – “If the provision of EV charging is exempt from regulation” – is not met and it is moot whether EVCS by BC Hydro and FBC would be justified in that scenario.

To be clear, however, given that EVCS by BC Hydro and FBC is a regulated service under the UCA, BCSEA-SCBC’s view is that the justification for BC Hydro and FBC to provide public DCFC services is to kick-start the EV and EV charging markets and to

⁷ BCUC EVCS Inquiry Phase 1 Report, p.46.

⁸ Tesla’s network of EVCS stations is (admirably) supported by Tesla alone. However, Tesla does not suggest that its EVCS stations ‘pay for themselves’ by revenue from EV drivers.

reduce GHG emissions in B.C. Safety-only regulation of EVCS by exempt public utilities removes a large barrier (regulatory burden) to their participation in the market. However, it does not make their participation financially viable on an unsubsidized competitive basis, and therefore it does not obviate the importance of BC Hydro and FBC being actively involved in providing public DCFC services while the market is developing.

BCSEA-SCBC understand the remaining three questions (labeled (b), (c) and (d)) to be applicable even where the Commission has concluded that EV charging service is a regulated service. BCSEA-SCBC's responses are as follows.

2 (b) If the role of non-exempt public utilities is to kick start the market, how can the BCUC determine when the kick start is no longer needed?

The BCUC can and should determine when the EV kick start by BC Hydro and FBC is no longer needed by having a future inquiry into the situation. The timing could be set in advance, such as five years after the Phase 2 report. Or the timing of the inquiry could be determined by the Commission in the future, based on complaints that public EVCS by BC Hydro and FBC is inhibiting entry into the EVCS market by exempt public utilities or excluded entities, or on application by BC Hydro or FBC.

(c) What is the role of those utilities once that kick start is completed?

BCSEA-SCBC expect that there will be geographic differences such that when the kick start is completed in some areas there will be other areas with a continuing need for EVCS by BC Hydro and FBC. The experience in other jurisdictions is that there can be a role for public utilities to provide 'make ready' services where the public utility is not itself providing retail EV charging service.

(d) If there are stranded assets at that time how should they be dealt with?

BCSEA-SCBC suggest that any stranded assets be dealt with at the time they become identified, and through the generally available regulatory processes, e.g., revenue requirements applications or specific applications.

3. If non-exempt public utilities participate in the EV charging market, should EV charging customers constitute a separate class from which costs associated with EV charging infrastructure is recovered? Or should the service be offered in a separate non-regulated business? What are the implications of each of these regulatory models?

In BCSEA-SCBC's view, the Commission should not require DCFC services by BC Hydro and FBC to be provided through a separate non-regulated business. Nor should DCFC services by BC Hydro and FBC be subject to treatment as a separate class of service.

BC Hydro said in its evidence, "Traditional cost of service to assign the costs of fast charging to a utility class of service comprised of fast charging customers would result in costs to those customers that would be uneconomic and prohibitive to the utilization of the service."⁹ BCSEA-SCBC agree with BC Hydro that "at this early stage of market

⁹ Exhibit C1-2, p.12. And see Exhibit C1-4, BC Hydro response to BCUC IR 1.23.7, pdf p.183.

development, an objective of rate setting [for BC Hydro's public DCFC service] may be to set the rate at a reasonable level to recover costs to the extent possible."¹⁰

In BCSEA-SCBC's view, applying a traditional cost of service approach to public DCFC service by BC Hydro and FBC would, at least in the short- to medium-term, prevent such service from being implemented. BC Hydro has said that it would only provide EV charging services on a regulated basis, and not through a non-regulated entity.¹¹ In addition, requiring BC Hydro and FBC to structure their respective provision of DCFC service under a non-regulated affiliate "would add additional cost and complexity to the delivery of services outside of the traditional role of regulated public utilities."¹²

4. Should other customer classes of non-exempt public utilities subsidize costs associated with the provision of charging services that can't be recovered from EV charging customers? How much of the cost is it appropriate for them to subsidize – should there be a cap?

In BCSEA-SCBC's view it is appropriate for all customers of BC Hydro and FBC to contribute to a reasonable extent to covering the otherwise unrecovered costs of public DCFC services provided by BC Hydro and FBC during the ramp-up of the EV charging market in B.C.

BCSEA-SCBC do not expect that any cross-subsidy of BC Hydro and FBC's DCFC services would be either unlimited in size or permanent in duration. For example, it is noted that considerable funding for BC Hydro's and FBC's investments in DCFC infrastructure has come from governments and not from the utilities' ratepayers.

5. If assets are stranded as a result of changing technology or other factors, who should pay for the potential stranded EV charging assets which may be in the non-exempt public utility's rate base?

As noted in the response to question 2, BCSEA-SCBC's view is that if the provision of DCFC services by BC Hydro and FBC results in certain stranded assets in the future then such stranded assets should be dealt with at the time they become identified, and through the generally available regulatory processes, e.g., revenue requirements applications or specific applications.

The Panel addresses the risk of stranded EV infrastructure assets in the sixth paragraph on page 46 of the Phase 1 Report. It refers to "the slower development of DCFC infrastructure [being] a result of the high costs and the risk of cost recovery for a service provider." In BCSEA-SCBC's view, while there is a risk of stranded EV assets, this is not the primary obstacle to stand-alone economic viability of public DCFC service in B.C. at the present time. Rather, the primary obstacle is the 'chicken and egg' problem of low demand and low EVCS revenue in the short- to medium-term associated in part with the shortage of DCFC stations curtailing growth of the EV sector.

6. In the context of BCUC economic regulation, what regulatory justification is required to allow existing utilities to cross subsidize EV charging services? If EV charging services add incremental load, does that justify

¹⁰ Exhibit C1-2, p.12.

¹¹ Exhibit C1-4, BC Hydro response to BCUC IR 1.27.4, pdf p.205.

¹² Exhibit C1-2, p.15.

cross-subsidization? Would the incremental load appear without the subsidization?

In BCSEA-SCBC's view, the main regulatory justification for the Commission allowing BC Hydro and FBC to provide public DCFC service that may require some cross-subsidization for a period of time is to reduce GHG emissions in B.C. by displacing the combustion of fossil fuels.

The provision of public DCFC service by BC Hydro and FBC is intended to *accelerate* the increase in electric load from EV charging. Particularly in the case of BC Hydro, this acceleration of increased load may be financially beneficial to BC Hydro and hence ratepayers. This would, in effect, reduce the amount of any cross-subsidization.

7. What are the implications of the province's energy objectives, as stated in the Clean Energy Act, with respect to non-exempt public utilities providing potentially subsidized EV charging services? Are there noneconomic justifications such as environmental benefits or meeting greenhouse gas reduction targets?

The B.C. energy objective to reduce GHG emissions strongly supports the provision of public DCFC services by BC Hydro and FBC.

8. If non-exempt public utilities participate in the EV charging market, do they have any obligation to serve EV charging customers?

Where BC Hydro and FBC provide public DCFC stations they have an obligation to serve customers, i.e., EV drivers, who seek service at the stations. BC Hydro and FBC would have no obligation under the UCA to provide a DCFC station at any given location.

9. Should non-exempt public utilities be provided the same exemptions in regard to EV charging services as are other EV charging market participants? This includes exemption from Part 3 of the UCA, with similar retentions of certain sections by the BCUC.

BCSEA-SCBC strongly support a light-handed regulatory approach to the provision of public DCFC service by BC Hydro and FBC.¹³ Retention of safety oversight by the Commission would be appropriate. It would also be appropriate to ensure that BC Hydro and FBC report regularly to the Commission on their respective DCFC activities, whether this is accomplished through existing mechanisms or through a new requirement specific to DCFC service.

10. Any other comments that may be helpful to the Panel.

In BCSEA-SCBC's view, the regulatory challenges associated with whether and how to structure BC Hydro's and FBC's provision of public DCFC service are primarily those associated with the impact of cross-subsidization on the core ratepayers and only secondarily the factors involving the effect of BC Hydro's and FBC's public DCFC service on other existing or potential providers of EV charging services. In large part, this is because the B.C. market for public DCFC service is so undeveloped at the present

¹³ Exhibit C6-2.

time. Apart from the Tesla network, which is unique, the vast majority of public DCFC stations in BC are owned by BC Hydro or FBC and operated by BC Hydro, FBC or municipalities.

B. Wholesale rate for providers of EVCS

11. Is there a need for a specific tariff provisions for the wholesale provision of electricity for the purpose of EV charging?

The question is understood to be whether BC Hydro and FBC should have a specific tariff provision for providing electricity to a customer that uses the electricity to provide EV charging services on a commercial basis to EV customers.¹⁴ The status quo is that BC Hydro and FBC provide such service under the applicable general service rate.

The issue is that general service rates include demand charges that are expensive for customers who use the electricity to provide EVCS. Demand charges can be particularly expensive when the customer (especially a DCFC service provider) has a low load factor due to a less than fully developed customer base (i.e., EV drivers). To be clear, it is understood that purpose of a wholesale tariff for EVCS providers would be to reduce their cost of acquiring power from BC Hydro or FBC compared to their cost under the default tariff.

BCSEA-SCBC support consideration of measures that would facilitate the provision of EVCS. However, they are not sure that there is yet a sufficient evidentiary basis on which to conclude that a wholesale rate for EVCS end-use would necessarily be effective in promoting EV charging services.

12. If so, how should this wholesale tariff be designed? Is a time of use rate appropriate? Should there be any differences depending on the type of EV charging – Level 1, Level 2, and/or DCFC stations?

BCSEA-SCBC consider that the topic of a wholesale rate for EVCS is mainly applicable to DCFC service, and somewhat applicable to Level 2 retail EVCS. Level 1 EV charging service is not usually sold to the public.

Rather than approaching the topic by differentiating Level 1, Level 2 and DCFC service, it may be more practical to approach it according to the existing rate classes (i.e., residential and commercial). Or, more specifically, between rate classes that have no demand charge and rate classes that do have a demand charge.

Generically, there are at least three interrelated regulatory reasons for having an EVCS end-use rate:

- An EVCS end-use rate could include time of use provisions aimed at shifting load away from peak hours.
- An EVCS end-use rate could be designed to promote EVCS and the EV sector in B.C. in order to reduce GHG emissions by displacing the use of fossil fuels.
- An EVCS end-use rate could be designed to build load where the utility, as in the case of BC Hydro, has a surplus resource/load balance in the medium term.

¹⁴ This is implied from the term “wholesale.” This excludes customers of BC Hydro and FBC who receive electricity that they use for EVCS for their own purposes, such as home EV charging or fleet charging.

C. Safety of EVCS operations

13. Section 3 of the Electrical Safety Regulation states that it “does not apply to a public utility as defined in the Utilities Commission Act in the exercise of its function as a utility with respect to the generation, transmission and distribution of electrical energy”. Further, “distribution equipment” is a defined term in the UCA. Although it seems clear that EV charging equipment is not “generation or transmission”, the Panel did not make any finding in the Phase 1 Report on whether EV charging infrastructure is “distribution equipment.” The Panel invites submissions on this issue in Phase 2. In responding, Interveners are requested to consider the status of the provider – for example, is the interpretation different for a non-exempt public utility than it would be for an exempt utility or a provider excluded from the definition of a public utility?

The question is whether section 3 of the Electrical Safety Regulation means that the Regulation does not apply to EV charging equipment operated by BC Hydro and FBC, or by an exempt public utility, because such equipment is operated by the public utility in the exercise of its function as a utility with respect to the distribution of electrical energy, taking into account the definition of “distribution equipment” in the UCA.

BCSEA-SCBC do not have a comprehensive answer. However, they offer the following comments:

- a. It may be that the BC government is in the best position to determine an outcome in which all EV charging services are subject to some appropriate form of safety oversight by a suitable agency, but without unnecessary duplication.
- b. An entity that is not a public utility, e.g., because it is excluded from the definition of public utility in the UCA (such as a municipality), is expressly outside the language of Section 3 of the Electrical Service Regulation, which applies to “a public utility as defined in the Utilities Commission Act.” It follows that EVCS by an entity that is excluded from the definition of public utility (such as a municipality) is not excluded from the Regulation by section 3. Whether EVCS by an entity that is excluded from the definition of public utility actually is regulated under the Electrical Safety Regulation depends on the other provisions of the Regulation.
- c. The definition of “distribution equipment” in the UCA appears to encompass EV charging equipment used by a public utility to provide service to the customers (i.e., EV drivers) of the utility.
- d. It is clear that section 3 of the Electrical Safety Regulation means that the Regulation does not apply to BC Hydro and FBC in their provision of EVCS.
- e. Interpreted literally, section 3 of the Electrical Safety Regulation means that the Regulation does not apply to “exempt public utilities” that provide EVCS. This is because the term “exempt public utilities” is defined in Appendix A of Order G-231-18 to refer to entities (that are not otherwise public utilities) that meet the definition of public utility due to providing EVCS. In other words, “exempt public utilities” are still public utilities despite their (recommended) exemption from various provisions of UCA. Taken in the bigger context, the fact the Commission’s recommended exemption retains a safety oversight role for the Commission adds more weight in favour of the interpretation that “exempt public utilities” are excluded from the Electrical Safety Regulation by section 3 of the Regulation.

D. Greenhouse Gas Reduction Regulation (p. 52 of the Phase 1 Report)

14. In Phase 2, the Panel invites submissions from Interveners on whether amendments to the Greenhouse Gas Reduction Regulation to allow public utilities to own and operate EV charging stations as a “prescribed undertaking” are appropriate and if so, the appropriate extent and scope of such undertaking.

Section 18 of the *Clean Energy Act* provides that the Commission must set the rates of a public utility to allow it to recover its costs of “prescribed undertakings” for the purpose of reducing GHG emissions. “Prescribed undertakings” are defined in the Greenhouse Gas Reduction (Clean Energy) Regulation¹⁵ under the *CEA*.

In BCSEA-SCBC’s view, section 4(3) of the GGR regulation should be amended to add as a prescribed undertaking a program by BC Hydro or by FBC to provide public DCFC service for the purpose of reducing GHG emissions in B.C. This would have the effect of requiring the Commission to allow BC Hydro and FBC to recover in their respective rates the costs of providing DCFC service.

BCSEA-SCBC recognize that consideration should be given to a reasonable limitation or cap on the amount of costs of DCFC service eligible for recovery as a prescribed undertaking.

BCSEA-SCBC’s view is that at the present time the prescribed undertaking should be limited to BC Hydro and FBC. That is, it would not be available to “exempt public utilities” or to existing regulated public utilities other than BC Hydro and FBC. BC Hydro and FBC are the two major electricity public utilities in B.C. They have the expertise, resources and commitment to implement DCFC stations available to the public. The possibility of expanding the DCFC prescribed undertaking to other public utilities could be considered in the future.

3.0 Conclusion

BCSEA-SCBC appreciate this opportunity to contribute to the Inquiry Panel’s deliberations. They look forward to reviewing the submissions of the other participants in the Inquiry.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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¹⁵ B.C. Reg. 102/2012.