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June 1, 2020

Ms. Marija Tresoglavic
Acting Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Tresoglavic:

**RE: British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
COVID-19 Residential Rate Relief for Renters Application**

BC Hydro writes in compliance with BCUC Order No. G-128-20 to provide its Written Submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Fred James", written in a cursive style.

Fred James
Chief Regulatory Officer

rz/rh

Enclosure

**BRITISH COLUMBIA UTILITIES
COMMISSION**

**COVID-19 Residential Rate Relief For
Renters Application**

**BC Hydro
Final Argument**

June 1, 2020

PART I: INTRODUCTION

1. This is BC Hydro's Final Argument concerning its May 14, 2020 application to amend its Electric Tariff. It is filed in accord with the Regulatory Timetable established by Commission Order G-128-20 (Exhibit A-4).¹
2. The tariff amendments sought by BC Hydro are to facilitate the delivery of its Emergency Program for Residential Customers (the **Program**)² to tenants of BC Hydro customers that pay for their BC Hydro electricity through their rental payments. The Application was filed and relief is sought from the Commission pursuant to the rate-setting provisions of the UCA, namely sections 59 to 61.
3. BC Hydro also sought an interim order approving the Application as soon as practicable and without notice pursuant to UCA section 91. That aspect of the Application has become moot, for the reasons described below.
4. The specific relief requested by BC Hydro is set out clearly in the Application,³ and the record of this proceeding is modest in scope, so the requested relief is not set out again in this Final Argument.
5. Acronyms and defined terms in this Final Argument are the same as those in the Application.

PART II: THE EMERGENCY PROGRAM FOR RESIDENTIAL CUSTOMERS

6. As noted, the record of this proceeding is modest, and accordingly BC Hydro does not repeat all the elements of the Program, including the new elements intended to provide relief to tenants that do not have a direct service relationship

¹ Superseding the initial regulatory timetable established by Order G-120-20, which contemplated an extension of the evidentiary phase of the hearing of the Application (by oral evidence).

² The Direction (OIC 159) defines the expression “emergency program for residential customers” in terms of Electric Tariff provisions that in turn define the COVID Relief Fund for Residential Customers as “a temporary program established by BC Hydro, available until June 30, 2020...”. That is, the ‘emergency program for residential customers program’ defined in the Direction is the same as the “temporary program” referred to in the definition of “COVID Relief Fund for Residential Customers”. Because they are the same thing, BC Hydro refers to both the COVID Relief Fund for Residential Customers and the “emergency program for residential customers” as the Program.

³ See Appendix B to BC Hydro’s Application (Exhibit B-1), pdf pages 11-12 of 79.

with BC Hydro. Those are set out in the Application and elaborated on in IR responses.

7. However, a few key points bear emphasising:
 - (a) The Program was not a “rate” or “service” when the BCUC issued Order G-79-20⁴ and it hasn’t changed in any way that makes it a “rate” or “service”. The scope of the Program has expanded to account for tenants who have no direct service relationship with BC Hydro, and as explained below the BCUC now has a discretion whether to approve the related tariff amendments, but otherwise the character of the Program as a non-rate program has not changed.
 - (b) To cost-effectively undertake the Program BC Hydro must be able to directly apply credits to customer bills, and to reverse those credits if the customer turns out to be ineligible for the Program. Those aspects of the Program require tariff amendments, as approved initially⁵ pursuant to the Direction, and now as applied for by BC Hydro in regard to the expanded Program.
 - (c) BC Hydro will continue with the Program regardless of whether the Commission issues the requested orders. However, the requested tariff amendments would make the Program more cost-effective by saving approximately \$460,000.⁶

PART III: LEGAL ISSUES

8. The Regulatory Timetable established by Order No. G-128-20 requests submissions from interveners and BC Hydro on a number of legal issues. In addition, IRs asked of BC Hydro sought submissions on additional legal issues,

⁴ In regard to BC Hydro’s COVID-19 Customer Relief Program Application.

⁵ By Order G-79-20.

⁶ See BC Hydro’s response to BCUC IR 1.1.5, Exhibit B-2.

which BC Hydro committed to responding to in this Final Argument.⁷ BC Hydro addresses all the legal issues in this section of the Final Argument.

9. A number of the legal issues turn on the proper interpretation of the Direction.⁸ For convenience, BC Hydro sets out the key provisions of the Direction that are applicable to the legal issues, as follows:

Definitions

1 In this direction:

“customer crisis fund regulatory account” means the regulatory account of the authority established under commission order G-166-17;

“emergency program for residential customers” means a program established by the authority in accordance with the amendments referred to in section 3 (1) (a);

Orders

3 (1) Within 5 days of the date of an application by the authority for the purposes of this section, the commission must issue final orders

(a) so that the authority’s Electric Tariff is amended as set out in Appendix A to this direction, and

(3) The commission must allow the authority to do the following:

(a) defer to the customer crisis fund regulatory account the following amounts:

⁷ Exhibit B-2.

⁸ Order in Council No. 159 issued on April 2, 2020.

- (i) *the amounts credited to customers in accordance with the emergency program for residential customers;*
- (ii) *the costs incurred by the authority in administering the emergency program for residential customers;*
- (iii) *in relation to the balance in the customer crisis fund regulatory account, interest determined in a fiscal year at a rate equal to the authority's weighted average cost of debt in that fiscal year;*

Cost recovery

4 In setting rates for the authority, the commission

(a) must allow the authority to recover, over a period determined by the authority, from all persons in British Columbia who receive or may receive service from the authority, the following amounts:

- (i) *the balance of the customer crisis fund regulatory account;*

(b) must not disallow for any reason the recovery in rates of the amounts referred to in paragraph (a).

A. The Commission is Not Compelled to Approve the Requested Tariff Amendments - BCUC IR 1.1.2

- 10. In the May 26, 2020 cover letter to its IR responses (Exhibit B-2) BC Hydro explained that it did not believe the Commission was compelled in law to approve the Application.
- 11. Section 3(1)(a) of the Direction, quoted above, required the Commission's approval of amendments to BC Hydro's Electric Tariff. The specificity of those amendments, and the required order, was made clear through the reference in section 3(1)(a) to Appendix A to the Direction. Appendix A was an extract from BC Hydro's Electric Tariff, and it showed, in black-line, the precise amendments that the Commission was required to make. The required order effecting those

precise amendments, Order G-79-20, was issued by the Commission on April 7, 2020. Two conclusions follow: (i) section 3(1)(a) of the Direction is spent, and no longer has no force or effect;⁹ and (ii) section 3(1)(a) was not in regard to the specific tariff amendments that BC Hydro proposes in the Application.

12. There is no other provision in the Direction, nothing in the UCA, and nothing in any other enactment, that compels the Commission, as a matter of law, to grant the relief requested by BC Hydro. In other words, the Commission has a discretion whether to approve the Application, or not.

B. The Commission Should Approve the Requested Tariff Amendments

13. In BC Hydro's submission, the Commission should exercise its discretion in favour of BC Hydro and grant the requested relief because, as described above, the requested tariff amendments will facilitate BC Hydro's cost-effective delivery of the Program. In particular, the Program will be effected with or without the requested relief, but not approving the Application will simply increase the costs associated with doing so, by approximately \$460,000.¹⁰

C. The Rental Relief Is Provided Pursuant to the Program – Legal Issue (i) and BCUC IR 1.1.1

14. As described above, the Program when it was first conceived did not include provision for tenants whose electricity costs are bundled with their rental payments. The interpretation issue that arises is whether the Program as defined in the Direction was fixed in time on a certain date, including possibly the date the Direction was enacted. In BC Hydro's submission the answer is "no".
15. As noted, the Program is defined in the Direction as follows: "*emergency program for residential customers*" means a program established by the authority in accordance with the amendments referred to in section 3 (1) (a) [underline added]." BC Hydro notes the use of the indefinite article "a" rather than "the",

⁹ Except, perhaps, as an interpretive aid.

¹⁰ See BC Hydro's response to BCUC IR 1.1.5, Exhibit B-2.

indicating a program that is not necessarily fixed at a point in time. That is, had the Lieutenant Governor in Council¹¹ intended to refer to the program as it was on a specific date (including on the date the Direction was enacted) it would have chosen words to express that idea, starting with the use of a definite article “the”, and going on to define the Program in terms of a specific date.

16. BC Hydro also refers to sections 7 of the *Interpretation Act*:¹²

Enactment always speaking

7 (1) Every enactment must be construed as always speaking.

(2) If a provision in an enactment is expressed in the present tense, the provision applies to the circumstances as they arise.

17. The thrust of section 7 is that enactments, including the Direction, should be interpreted in a manner that allows for their application to circumstances that may not have been under consideration at the time the enactment became law.
18. Section 7 expresses a rule of construction that is rebuttable with clear words to the contrary – but no such words are found in the definition. That is, the Lieutenant Governor in Council could have, but did not, specify the Program as it existed on a particular date.
19. It follows from the foregoing that the relief BC Hydro will provide to tenants under the Program is relief provided under the “*emergency program for residential customers*” referred to in the Direction, even though the Program has evolved since the date the Direction was enacted.

D. BCUC Jurisdiction to Grant Relief for Electricity Service Charges Included in Rents – Legal Issue (ii) and BCUC IR 1.1.3

20. BC Hydro understands that this issue refers to the BCUC’s jurisdiction to approve the aspect of the Program that would allow BC Hydro to provide bill credits to

¹¹ The entity to whom the Legislature has delegated authority to issue directions to the Commission under UCA section 3.

¹² RSBC 1996 c 238

landlords for the benefit of their tenants. To be clear, BC Hydro does not seek an order in regard to the substance or the merits of the Program. The Program is not a “service” or a “rate” under the UCA and is no more in the Commission’s jurisdiction to determine than when the Commission issued Order G-79-20. Put another way, the Commission did not need to approve the Program in April when it approved the initial tariff amendments required by the Direction, and similarly does not now need to approve the Program to approve the requested tariff amendments. It follows that the BCUC’s jurisdiction in regard to the Program is not relevant to whether it should approve the requested tariff amendments.

21. At most the requested order, if granted, will result in the Program accommodating the provision by BC Hydro’s of credits directly against customer bills. If the requested order is not granted the Program will continue, but without that feature.
22. As noted, the requested tariff amendments, if granted, will save BC Hydro considerable expense in its implementation of the Program. Since Program costs are to be deferred to the “customer crisis fund regulatory account”, per section 3(3)(a) of the Direction, and since such deferred costs are to be recovered from all BC Hydro customers”, per section 4(a)(i) of the Direction, approving the Application would benefit all BC Hydro customers.

E. Appropriateness of Interim Approval – Legal Issue (iii)

23. In BC Hydro’s submission its request for an interim order, without notice, has become moot.
24. An interim order without notice is no more than an order issued in exigent circumstances, and which is meant to be re-visited later as time and procedural fairness considerations allow. In a price-setting context an interim order is often expressed to be “refundable”, to allow for the prices to be re-set in a final order and refunds made as applicable – but that is a specific type of interim order that BC Hydro did not seek in the Application. As noted above, BC Hydro does not seek approval of the Program nor of its ability to provide credits to landlords for

the benefit of their tenants in the circumstances described in the Application. That is, BC Hydro does not seek an order that is capable of refund.

25. The Application was filed on May 14, 2020 in regard to a Program that is scheduled to end on June 30, 2020. BC Hydro was seeking to obtain the ability to implement the Program cost-effectively as soon as possible to avoid unnecessary expense. Instead BC Hydro was required to provide notice to RRA interveners, was issued and answered IRs, was preparing to testify at an oral hearing (now since cancelled), is now filing legal submissions, and may have to appear to make legal argument on June 5, 2020. The hearing that BC Hydro proposed would occur after the interim order was issued has in fact been underway since May 21, when the initial process order was issued. It follows that there is no need for an interim order. Instead, the Commission should issue a final order; ideally, to potentially capture some of the advantages of the requested order, BC Hydro would prefer a final order as soon as practicable, with reasons to follow.

F. Regulatory Account Issues - Legal Issue (iv)

26. Two questions are asked: (i) whether a BCUC order is required to allow BC Hydro to defer Program costs to the Customer Crisis Fund Regulatory Account; and (ii) whether the question of BCUC approval turns on whether the requested tariff amendments are granted.
27. In regard to the first question, BC Hydro does not believe a formal order is required. The regulatory account is already established, and BC Hydro will defer Program costs to it as they arise. If and when BC Hydro seeks to recover those costs in rates, through a revenue requirement proceeding, the Commission and interveners would have the right to confirm whether those costs properly fall within the meaning of the words in section 3(3)(a) of the Direction.
28. In regard to the second question, BC Hydro does not believe that deferral of Program costs to the Customer Crisis Fund Regulatory Account is related to the requested tariff amendments. The Program exists, and costs will be incurred and

deferred, whether BC Hydro can apply the credits directly to landlords bills or has to resort to mailing cheques. That's because the Direction requires the Commission to allow Program costs to be deferred to the account, per section 3(3)(a), and the Program is not limited to the Program as it was conceived when the Direction was issued for the reasons set out above.

G. Whether Section 63 Approval is Required – Legal Issue (v)

29. This question asks whether an approval is required under UCA section 63, or otherwise, to provide the tenant relief “given that the program is not a rate”. With respect, section 63 only applies with respect to “rates”: it empowers the Commission to allow a public utility to charge more or less than what is set out in the “subsisting schedules of the utility applicable to that service and filed under this Act”. Nevertheless, BC Hydro reiterates that the Program has not been structured as a rate since its inception, and the proposed tariff amendments would not make it a rate any more than the tariff amendments approved by order G-79-20 (which did not make it a rate).

H. Is the Electricity Cost Component of Rent a Rate? - BCUC IR 1.1.4

30. This IR asks whether the electricity cost component of tenants’ bundled rental payments constitute a “rate” under the UCA. The question is premised on an incorrect understanding that BC Hydro seeks tariff amendments in regard to such cost components. No such relief is sought from the Commission in the Application, and generally no approval of the Program is being requested. Accordingly, the question of whether such cost component can be considered a “rate” is not relevant to the Application.

I. Whether Differences in Eligibility between Various Programs are Unduly Discriminatory - BCUC IR 1.2.3

31. This IR asks whether differences in eligibility requirements between the Program and the BC-TSR Program and/or the BC Hydro’s Customer Relief Program are unduly discriminatory or preferential, per UCA section 59. The answer is “no” because section 59 of the UCA is expressly in regard to “rates”,

and none of the programs cited in the IR are rates. All are programs, and indeed the BC-TSR Program is not a program of a public utility but of government.

ALL OF WHICH IS RESPECTFULLY SUBMITTED JUNE 1, 2020.

A handwritten signature in blue ink, appearing to be 'Jeff Christian', written over a horizontal line.

Per: _____

Jeff Christian, Counsel for BC Hydro
Lawson Lundell LLP