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VIA E-FILING

Marija Tresoglavic
Acting Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3



Reply to: Leigha Worth
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Dear Ms. Tresoglavic,

**Re: British Columbia Hydro and Power Authority Customer Crisis Fund (CCF) Pilot Program – Evaluation Report ~ Project No. 1599030
BCOAPO Submission Regarding Items Outlined in Appendix B**

Please be advised that we continue to represent the BC Old Age Pensioners' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, and Together Against Poverty Society, known collectively in this regulatory process as "BCOAPO et al." ("BCOAPO").

We provide this submission on items outlined in Appendix B in accordance with the regulatory timetable established by Commission Order G-224-20 (Exhibit A-4).

Introduction

Following a public hearing regarding BC Hydro's 2015 Rate Design Application (2015 RDA), the British Columbia Utilities Commission (BCUC) issued Order G-5-17 and its accompanying Reasons for Decision on January 20, 2017. In that Decision, the BCUC approved the establishment of a pilot program for a crisis intervention fund and directed BC Hydro to file a proposal for said program within six months of the date of the 2015 RDA Decision.

Following a regulatory process in the late summer and fall of 2017 including a Streamlined Review Process in early November, the Commission issued Order G-166-17, approving the CEF, the associated regulatory account, and ordering the Utility to file an evaluation report within 90 days of the completion of the pilot's second year, indicating that the pilot would continue until, "the earlier of three years from the CEF pilot implementation date, Commission approval of an application from BC Hydro to end the pilot prior to the end of the three year CEF Pilot, or issuance of a Commission order to end the CEF Pilot."¹

The CEF, renamed the Customer Crisis Fund (CCF) Pilot Program, came into effect on June 1, 2018 as specified in Order G-166-17.

After receiving a significant number of complaints from non-participating residential ratepayers regarding the CCF Pilot, in Order G-211-18 the BCUC directed BC Hydro to file an evaluation report of the CCF Pilot Program within 90 days of the completion of the first year of the CCF Pilot Program. The BCUC subsequently commenced a proceeding to review the Utility's First Year

¹ Commission Order G-166-17, page 2 of 2.

Evaluation Report (CCF Evaluation Report Proceeding). This preliminary process required BC Hydro to publish notice of its filing in print as well as via Twitter, LinkedIn and Facebook. Then, after the registration deadline passed there were simultaneous submissions from all parties on the timing, scope and regulatory process with provision made for simultaneous replies. At that time, Hydro's submissions were that it was not possible to provide an analysis of the program based on the preliminary data available with intervenors taking various positions on the program's evaluation ranging from supporting a delay in the evaluation to the end of year 2 to calls to immediately scrap the pilot without any further process. In the end, the BCUC adjourned the CCF Evaluation Report Proceeding pending the filing of the two-year evaluation report on or before July 28, 2020 as originally specified in Order G-166-17.

On July 31, 2020, BC Hydro filed its Two-Year Evaluation Report for the Customer Crisis Fund (CCF) Pilot Program (Two-Year Evaluation Report) with the BCUC and on August 28, 2020 the BCUC issued Order G-224-20, re-opening the Evaluation Report Proceeding and established a regulatory timetable requesting submissions on a number of specific issues.

On September 4, 2020 BC Hydro filed its submissions. Set out below are BCOAPO's submissions on the items identified by the BCUC.

BCOAPO

Order G-224-20² requested submissions on three specific items. The three items are identified in the following sections. For each item BCOAPO has provided a brief summary of BC Hydro's submissions followed by its own submissions on the specific subject-matter requested by this Commission Panel.

BCUC Item #1: The jurisdiction of the BCUC to review the CCF Pilot Program in light of OIC 159.

On April 2, 2020, the Lieutenant Governor in Council issued a Direction to the BCUC Respecting COVID-19 Relief (Order in Council (OIC) 159) which stated, amongst other things, that the BCUC must allow BC Hydro to defer amounts for the residential customer COVID-19 Relief Program to the CCF regulatory account. In addition, OIC 159 states³ that the BCUC "may not exercise its powers under the Act to amend, cancel or suspend the customer crisis fund rate rider, except on application by the authority (i.e., BC Hydro)."

BC Hydro's Submissions⁴

In its submissions responding to item 1, BC Hydro outlined its position that generally the BCUC has the jurisdiction to review the CCF Pilot Program under section 24 of the Utilities Commission Act.

More specifically, the Utility expressly acknowledged that there are elements of the Electric Tariff such as the provisions that allow CCF grants to be credited against customer bills that are within the BCUC's jurisdiction to terminate or amend (section 1 Definition of the Customer Crisis Fund, Customer Crisis Fund Grant, and Customer Crisis Fund Return; section 2.1 Application for Service and Service Agreement; and section 5.2.1 Regular Billing) while noting there are some

² Appendix B

³ Section 3(4)

⁴ Exhibit B-6, pages 1-2

that are beyond this Panel's jurisdiction to terminate or amend because of the provisions of OIC 159 (e.g., the CCF Rate Rider).

Because the jurisdiction of the BCUC is somewhat muddled by the provisions of OIC 159, BC Hydro went on to state:

"BC Hydro has not undertaken a comprehensive legal analysis of all CCF Pilot Program elements, but considers that any element of the CCF program that the BCUC was to change in consequence of a review should be the subject of a more in-depth legal review".

BCOAPO's Submissions

BCOAPO notes that, in its original Customer Emergency Fund⁵ Application, BCH did not seek an approval of the proposed CEF Pilot itself but rather sought rate and accounting orders that would enable it to implement the CEF Pilot on the terms described in the originating Application⁶. These approvals were sought by BC Hydro and approved by the BCUC under Sections 56 to 61 of *the Utilities Commission Act (UCA)*⁷.

In our submission, the BCUC's jurisdiction to review and change any of these rate-related approvals would fall under Sections 58 and Sections 59-61 of the *UCA* but we, like BC Hydro, interpret the provisions of OIC 159 as rendering the CCF Rate Rider (i.e., RS 1903) beyond the jurisdiction of the BCUC to terminate or amend. BCOAPO also agrees with BC Hydro that other elements of its Electric Tariff related to the CCF Pilot Program could well still be within the jurisdiction of the BCUC to terminate or amend but that this is not cut and dry.

We do specifically note that any such consideration on the part of the BCUC would have to take into account:

- i. Section 58 (1) of the *UCA* that requires any such determination must be made "after a hearing", and
- ii. The fact that the various aspects of the Tariff work in conjunction with each other and the CCF Rate Rider (which is one element of the Program) cannot be amended or terminated except on Application by BC Hydro.

Furthermore, BCOAPO notes that elements of the CCF Pilot Program such as the eligibility criteria are not part of the Tariff approvals related to Program and therefore are not subject to the BCUC jurisdiction under Sections 59-61 of the *UCA*.

As result, BCOAPO agrees with BC Hydro that "any element of the CCF program that the BCUC was to change in consequence of a review should be the subject of a more in-depth legal review".

In its submissions BC Hydro considers that the BCUC has the jurisdiction to review the CCF Pilot Program under section 24 of the *UCA*. Section 24 states:

In its supervision of public utilities, the commission must make examinations and conduct inquiries necessary to keep itself informed about:

⁵ Later renamed the Customer Crisis Fund (CCF)

⁶ See page 13 of the original Application.

⁷ BCUC Order G-116-17

- (a) the conduct of public utility business,
- (b) compliance by public utilities with this Act, regulations or any other law, and
- (c) any other matter in the commission's jurisdiction.

IN BCOAPO's view, while Section 24 (a) appears to give the BCUC the jurisdiction to review the CCF Pilot Program (including elements such as eligibility), questions may arise regarding the legitimate scope and depth of any such review that would need to be resolved at the start of any such undertaking.

Furthermore, while Section 24 may give the BCUC the authority to conduct a review of certain elements of the CCF Pilot Program not excluded by OIC 159, contrary to BC Hydro's submissions, the Section in and of itself does not appear to give the BCUC the jurisdiction to amend or terminate other elements of Program. In our submission, the jurisdiction or authority must be found in other sections of the Act and we do not see that in the current legislation.

BCOAPO submits this further supports BC Hydro's overall conclusion that "any element of the CCF program that the BCUC was to change in consequence of a review should be the subject of a more in-depth legal review".

BCUC Item #2: Whether the BCUC should proceed with a review of the CCF Pilot Program based on the information contained in the CCF Evaluation Reports or whether the proceeding should be adjourned again.

BC Hydro Submissions⁸

In its submissions BC Hydro notes that Order G-116-17 included the following provision regarding the duration of the CCF Pilot Program:

"The CEF Pilot [CCF Pilot Program] will continue until the earlier of three years from the CEF pilot implementation date, Commission approval of an application from BC Hydro to end the pilot prior to the end of the three-year CEF Pilot, or issuance of a Commission order to end the CEF Pilot".

As a result, BC Hydro states that "It seems that a review of the CCF Pilot Program would be in regard to either terminating the program, or extending it, subject to potential limitations on the BCUC's jurisdiction as noted above (i.e., in response to Item #1)".

In its submissions BC Hydro states that it does not support a review of the CCF Pilot Program and submits that the program should be allowed to terminate on May 31, 2021 as provided for in Order G-116-17. BC Hydro's submission opines that the CCF Rate Rider will also "terminate" on May 31, 2021.

BC Hydro's rationale for taking this position is the Pilot Program would only be legally justified on the basis that it might show utility benefits within the timeframe already concluded and that, since the Two-Year Evaluation Report shows those benefits have not materialized, there is no basis to extend the program under the current legislative framework. Further, BC Hydro contends that a review of the Program to test BC Hydro's conclusions as set out in the Two-Year Evaluation Report would seem to be a poor use of resources given the costs of the Program and the non-existent economic benefits.

⁸ Exhibit B-1, pages 2-3

BCOAPO's Submissions

BCOAPO notes that BC Hydro's view that the CCF Pilot Program should be allowed to terminate on May 31, 2021 is based on an arguable assumption that the conclusions of its Two-Year Evaluation Report are unassailable and immutable regardless of how long the program might be left in operation or the methodologies used to evaluate it. However, in BCOAPO's view it would be inappropriate for the BCUC to simply accept the conclusions of the Evaluation Report without giving ratepayers like our clients the opportunity to test its evidence. We do note the results of BC Hydro's recent Freshet Rate pilot program were subjected to public review prior to the BCUC determining whether or not the rate should be made permanent or terminated and submits that a similar approach should be used in the case of the CCF Pilot Program.

In BCOAPO's submission there are aspects of the Evaluation Report that warrant further testing and explanation before the findings of the Report should be ruled upon. In particular, BCOAPO submits there is a need to test and establish the appropriateness of the methodology and inputs used by BC Hydro in its evaluation of the program's benefits as well as the appropriateness of the control group used to measure the benefits (i.e., does it truly represent the results that would have occurred if the Program had not been in effect).

While we freely acknowledge that many may question whether there is value in extending the timeline during which a program's performance is evaluated, BCOAPO notes it is not an idea without precedent, and more importantly a recent BC Hydro precedent. We note that in this process there was no consideration or discussion of the possibility of ratepayer benefits sufficient to justify the program appearing only in the middle to long term in BC Hydro's evaluation document – timelines used to calculate the Ratepayer Benefit Cost Ratios to justify the recently concluded BC Hydro Fleet Electrification Rate Application⁹. Given the numbers of British Columbians who have had to access this program, both due to COVID-19 and the negative financial effects of other life-changing events and the widespread public support for the CCF, we suggest an evaluation at least as robust as that used to justify the BCH Fleet Electrification Application is appropriate.

While the CCF Pilot Program has been impacted by the COVID-19 Pandemic, the impacts of the COVID-19 pandemic are not reflected in the analysis of CCF Pilot benefits (i.e., the analysis used the 22 months of data was prior to the pandemic's direct effect on British Columbia) and BC Hydro's filing indicates the utility considers the 22-months of data sufficient enough to reveal if economic benefits existed¹⁰. We recognize that the BCUC Panel was soliciting comments on parties' views on adjourning the proceeding to allow for further study and our submission on that issue is twofold. Because COVID-19 is not likely to cease to be an issue in the near future, it is reasonable to expect that the impacts of this Pandemic on the evaluation's "norm" to continue, potentially negating the value of extending the process in the short term. If, however, the examination window was extended to project or evaluate the impacts in the mid to long term (5, 10 or 15 years), there would be some COVID-19 related impacts on the control in the short term, but it would, in our submission, become less material as the examination's timeline was extended. In the end, our position on whether there is value to delaying this process depends on the length of that delay and/or the length of time BC Hydro is asked to project or report on.

⁹ BC Hydro used 5, 10, and 15 year time periods in its evaluations of the potential benefits to ratepayers of the proposed rates and these longer term time horizons were supported by the Commission Panel in its Decision to approve the Application.

¹⁰ Exhibit B-5, page 11

It is BCOAPO's view, at the very least that a review of the CCF Pilot Program is required no matter what the timelines are for projections or examinations and that this review should include process allowing parties to test BC Hydro's evidence and to supplement it through information requests and any evidence filed by other parties.

Finally, we wish to note that, contrary to BC Hydro's submissions, it is not readily apparent to counsel for BCOAPO that the CCF Rate Rider will automatically terminate when the CCF Pilot Program terminates. The approval granted by the BCUC in Order G-116-17 does not include any provision for its termination and neither does the current wording of RS1903 so, absent a detailed legal analysis, we cannot assume Hydro's position on this is correct.

BCUC Item #3: If the BCUC proceeds with a review of the CCF Pilot Program based on the information contained in the Evaluation Reports, please address the following:

a). The proposed regulatory process and the supporting rationale, and

b) The specific topics that should be addressed as part of the scope of the review.

BC Hydro Submissions¹¹

Given BC Hydro's view that a review is not warranted, the Utility offered no submissions on either the process or the scope of a review.

BCOAPO's Submissions

In BCOAPO's view, a review of the CCF could be achieved using a written process whereby parties could: i) solicit additional information from BC Hydro regarding the both determination of the benefits and costs of the CCF Pilot Program and the extent to which they are representative of the benefits and cost that would occur if the Program was implemented on a permanent basis and ii) submit their own evidence regarding the appropriateness of methodologies use and the results presented in BC Hydro's Evaluation Reports.

In BCOAPO's view a written process (as opposed to an oral proceeding) should be sufficient to address the question of whether there is sufficient evidence to support the continuation of the CCF Program and is more practical given the current COVID-19 pandemic situation.

At this early juncture, BCOAPO has not undertaken a comprehensive review of the Evaluation Reports, but considers that at a minimum the specific topics that should be addressed as part of the scope would be:

- CCF Program Costs – including the whether the costs reported by BC Hydro for the CCF are reasonable and appropriate and the extent to which they should be considered as an ongoing cost if the Program was to be extended.
- CCF Program Benefits – including whether BC Hydro has identified all of the areas where benefits could accrue to the utility as a result of the Program and whether the analysis used to quantify the benefits is appropriate.

¹¹ Exhibit B-1, pages 3-4

- Possible Program Improvements that could either reduce the utility costs or increase the utility benefits from the Program.

Conclusion

We have discussed in detail our clients' preliminary thoughts on the CCF Evaluation process in response to the specific items identified by this Panel but there are two additional reasons that BCOAPO strongly supports further process. The first reason is that, in response to residential ratepayers' cross examination in the most recent BCH RRA Oral Hearing, witnesses often referred to the CCF as a tool negating the need for measures like low income rates, terms and conditions amongst other affordability programs. While residential ratepayers were not impressed with that as a response to our questions, it would be a gross understatement to say it rankles, at the very least, to have had those witnesses refer to this program mere months ago as a justification for their lack of action on certain progressive rates, terms and conditions only to now have that same utility baldly propose abandoning the entire program without even minimal process.

The second additional reason BCOAPO opposes proceeding as BC Hydro has suggested is that this program is very important to residential ratepayers who are not independently wealthy and whose jobs are or could be negatively impacted by any number of life-changing events including the pandemic. We note it was the CCF that served as the home of and template for the COVID-19 relief offered to so many earlier this year and we do not expect that, absent it already having been in place, that relief could have been offered so well and so quickly to so many. It is equally important to note that, for those who still need help or whose lives are about to take an unexpected turn, the CCF is all there is left. As such, this program deserves at least as fulsome and forgiving a review as the Utility garnered for its plans to transition its fleet to electric vehicles.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Sincerely,
BC PUBLIC INTEREST ADVOCACY CENTRE

Original on file signed by:

Leigha Worth
Executive Director | General Counsel

Original on file signed by:

Irina Mis
Barrister & Solicitor