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British Columbia Utilities Commission
Suite 410, 900 Howe Street
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**Attention: Mr. Patrick Wruck, Commission Secretary and Manager,
Regulatory Services**

Dear Sirs/Mesdames:

**Re: FortisBC Inc. (“FBC”) Rate Design and Rates for Electric Vehicle Direct Current
Fast Charging Service Application – Reply Argument**

In accordance with the regulatory timetable in the above proceeding, we enclose for filing the Reply Argument of FortisBC Inc., dated April 13, 2021.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Christopher Bystrom*
*Law Corporation



BRITISH COLUMBIA UTILITIES COMMISSION

FORTISBC INC.

**RATE DESIGN AND RATES FOR ELECTRIC VEHICLE DIRECT
CURRENT FAST CHARGING SERVICE APPLICATION**

PROJECT NO. 1598940

REPLY ARGUMENT

OF

FORTISBC INC.

APRIL 13, 2021

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Part One: Introduction

1. In this Reply Argument, FortisBC Inc. (“FBC”) responds to the six arguments filed by interveners in this proceeding. The intervener arguments show broad support for FBC’s updated and revised application (“Application”),¹ as indicated by the following:

- (a) BC Sustainable Energy Association and Vancouver Electric Vehicle Association (“BCSEA-VEVA”) support approval of the Application.²
- (b) BC Hydro and Power Authority (“BC Hydro”) supports FBC’s Application.³
- (c) British Columbia Old Age Pensioners’ Organization et al. (“BCOAPO”) recommends that the BCUC accept the Application, subject to certain recommendations.⁴
- (d) Commercial Energy Consumers Association of British Columbia (“CEC”) agrees that FBC’s charging stations are prescribed undertakings and recommends that the BCUC approve FBC’s proposed rates, but, inconsistently, recommends that the rate not be exempt from general rate changes.⁵

2. ChargePoint does not express any opinion on the Application, but comments on some of the legal questions posed by the BCUC. Donald Flintoff (“Flintoff”) alone takes positions materially adverse to FBC’s Application, including opposing a levelized rate for FBC’s electric vehicle (“EV”) charging stations.

3. FBC submits that its Application is well established by the evidence in this proceeding, enjoys broad support from interveners, and should be approved.

4. In the remainder of this submission, FBC responds to the comments of interveners in their submissions. Silence on any statement should not be interpreted as agreement.

¹ Exhibit B-5.

² BCSEA-VEVA Final Argument, p. 4.

³ BC Hydro Final Argument, p. 10.

⁴ BCOAPO Final Argument, p. 21.

⁵ CEC Final Argument, p. 1.

PART TWO: FBC's CHARGING STATIONS ARE PRESCRIBED UNDERTAKINGS

A. Introduction

5. The submissions of BCSEA-VEVA,⁶ BC Hydro,⁷ and CEC⁸ are in agreement with or support FBC's submissions related to its charging stations as prescribed undertakings, including FBC's response to the legal interpretation questions posed by the BCUC and FBC's evidence that its direct current fast charging ("DCFC") stations are prescribed undertakings. BCOAPO is also supportive, except for some submissions on the legal interpretation questions.⁹

6. FBC responds below to the comments made by BCOAPO, ChargePoint and Flintoff on the legal interpretation questions posed by the BCUC that are contrary to FBC's position.

B. Legal Interpretation Questions Posed by the BCUC

1. How should a "site" be interpreted for the purposes of determining a "site limit" within a "limited municipality"? For example, should there be any considerations regarding geographic location, location size, or number of fast charging stations for a "site"? Can multiple electric vehicle (EV) charging service providers operate their fast charging stations under the same "site"?

7. Flintoff submits that consideration should be given to the location of a site, that the size and number of stations should be determined by the municipality or regional districts, and that different service providers should not operate at the same station.¹⁰ Flintoff's submissions do not have any grounding in the *Clean Energy Act* ("CEA") or *Greenhouse Gas Reduction (Clean Energy) Regulation* ("GGRR") and are without merit. Under the GGRR, FBC has discretion to determine the location and size of its charging sites and the number of DCFC stations per site,

⁶ BCSEA-VEVA Final Argument, Parts Two and Three, pp. 5-12.

⁷ BC Hydro Final Argument, pp. 1-10.

⁸ CEC Final Argument, paras. 16-17, 21-24, and 29.

⁹ BCOAPO Final Argument, pp. 3-12.

¹⁰ Flintoff Final Argument, p. 13.

and there is no restriction on different service providers operating at the same site. BC Hydro,¹¹ BCSEA-VEVA,¹² CEC¹³ and BCOAPO¹⁴ all agree with FBC on this matter.

2. a. How should “on the date the public utility decides to construct or purchase an eligible charging station” be interpreted? What information should be used to determine when that date was? Should the utility be required to also determine the site where the eligible charging station will be located by that date?

8. ChargePoint states that it would interpret “on the date the public utility decides to construct or purchase an eligible charging station” as “the date that the public utility completed the necessary activity that would allow the utility to make a reasonable determination of when a charging station would come into operation.”¹⁵ FBC disagrees. ChargePoint appears to be suggesting that the public utility has decided to construct or purchase a station when it knows *when* the station will come into operation; however, there is not a necessary connection between deciding to construct and purchase a station and knowing when it will come into operation. Generally, the utility’s certainty with respect to the operation date will increase as planning progresses, but the actual decision to proceed with the construction or operation could occur at virtually any time. As FBC has suggested, an executed and dated contract or letter of intent would be evidence of such a decision being made.¹⁶

9. Flintoff argues that the utility should provide a “construction contract”¹⁷ and that “a non-binding letter of intent” is not sufficient.¹⁸ First, this evidentiary issue does not arise in this proceeding and should not be determined by the BCUC in the abstract. Second, if the issue arises, then the BCUC should assess based on the evidence before it whether the particular evidence tendered by the utility – whether a contract or letter of intent or other evidence -

¹¹ BC Hydro Final Argument, p. 3.

¹² BCSEA-VEVA Final Argument, paras. 13-18.

¹³ CEC Final Argument, paras. 21-23.

¹⁴ BCOAPO Final Argument, p. 4.

¹⁵ ChargePoint Final Argument, p. 3.

¹⁶ Exhibit B-7, BCUC IR1 3.8.2.

¹⁷ Flintoff Final Argument, p. 13.

¹⁸ Flintoff Final Argument, p. 4.

shows that the utility had a reasonable expectation that the station would come into operation by December 31, 2025 when it decided to construct or purchase a station.

2.b. Considering that there may be circumstances where it may not be known if an eligible charging station has met the criteria to be a prescribed undertaking until the station comes into operation, should the BCUC make a determination, on a forecast basis, of whether an eligible charging station is a prescribed undertaking? What are the advantages and disadvantages to the utility and its ratepayers of the BCUC making such a determination on a forecast basis?

10. Flintoff argues that the BCUC “must make a determination on whether an eligible charging station is a prescribed undertaking based on the charging station meeting the criteria, not on a forecast basis of meeting the criteria of a prescribed undertaking.”¹⁹ With respect, this argument is not coherent and does not explain how the BCUC is to meet its statutory obligation under section 18 of the CEA to set rates that allow FBC to recover its costs incurred on prescribed undertakings. FBC relies on its Final Submission on this topic (pp. 8-10). The submissions of BC Hydro,²⁰ BCSEA-VEVA,²¹ BCOAPO²² and CEC²³ either explicitly agree with FBC or are supportive.

3.a. Does section 5 of the GGRR include fast-charging stations that came into operation prior to June 22, 2020, as a prescribed undertaking on a retrospective basis? Why or why not?

11. Flintoff states that “there is no indication that section 5 of the GGRR includes fast-charging stations that came into operation prior to June 22, 2020, as a prescribed undertaking on a retrospective basis.”²⁴ Flintoff is incorrect and provides no reasonable explanation or legal argument in support of his position. FBC relies on its Final Submission on this topic (pp. 11-15). The submissions of BC Hydro,²⁵ BCSEA-VEVA,²⁶ BCOAPO²⁷ and CEC²⁸ either explicitly agree with FBC or are supportive.

¹⁹ Flintoff Final Argument, p. 14.

²⁰ BC Hydro Final Argument, pp. 4-5.

²¹ BCSEA-VEVA Final Argument, paras. 23-26.

²² BCOAPO Final Argument, p. 5.

²³ CEC Final Argument, paras. 21-23.

²⁴ Flintoff Final Argument, p. 15.

²⁵ BC Hydro Final Argument, pp. 5-8.

12. BCOAPO agrees with FBC that its pre-June 22, 2020 stations are prescribed undertakings, but then suggests that it would not support recovery of costs from past test periods in rates going forward.²⁹ There is no basis for such a position. Section 18(2) of the CEA requires that, if an EV charging station is a prescribed undertaking under section 5 of the GGRR, the “costs incurred with respect to the prescribed undertaking” must be recovered in rates. The BCUC has a statutory obligation to set rates to recover FBC’s costs incurred. FBC also notes that the BCUC directed FBC to track its EV costs separately in Order G-9-18, so there has always been the prospect of recovery of these past costs. FBC will be proposing a mechanism for recovery of its past costs in its upcoming Annual Review.

3. b. In the case of a station that needed to be upgraded to meet the criteria to be a prescribed undertaking, what portion of the total capital cost of the upgraded station should be allowed into a public utility’s rate base? For instance, would this be the entire cost of the upgraded station less accumulated depreciation, or only the incremental investment portion for the upgrade? Please provide reasons in support.

13. BCOAPO recognizes that the question is hypothetical, but submits that “only those incremental costs associated with the upgrade should be allowed into the utility’s rate base – it would be fundamentally unfair to allow an operation that existed previously in a format that did not qualify for prescribed undertaking status to then be fully added to rate base when the utility has incurred only the cost of the upgrade.”³⁰

14. FBC disagrees that the situation described by BCOAPO would be unfair. It is fair for the public utility to be able to recover its costs and for customers to pay the cost of the service they are receiving. The alternative, where the utility is unable to recover its costs and customers receive free service, or service at a fraction of its real cost, is unfair. However, this question is not determined by what is fair or unfair. It is a matter of statutory interpretation and section 18 of the CEA is determinative. The costs incurred on prescribed undertakings are to be

²⁶ BCSEA-VEVA Final Argument, paras. 27-30.

²⁷ BCOAPO Final Argument, p. 6.

²⁸ CEC Final Argument, paras. 21-23.

²⁹ BCOAPO Final Argument, p. 6.

³⁰ BCOAPO Final Argument, p. 6.

recovered in rates. The station is the prescribed undertaking, not the upgrade, and therefore all the utility's costs must be recovered in rates.

15. Flintoff states that “only the incremental investment portion for the upgrade should be allowed as the accumulated depreciation is only an estimate.”³¹ FBC submits that this is not a coherent argument, has no basis in law or fact, and should be rejected.

4. Should all cost components of an eligible charging station be eligible for recovery under the GGRR (for example, paving costs, lighting installation and maintenance costs, washroom facilities, wheelchair accessible ramps)? Why or why not? If reasonable limits on cost recovery are required, how should they be determined and why?

16. ChargePoint states that it “does not make a determination on the interpretation of the CEA”, but recommends that FBC’s cost recovery should exclude “costs of amenities that may be used by EV drivers or may be redundant.”³² This is a question that is determined by the interpretation of the CEA. Therefore, ChargePoint’s recommendation, which is explicitly not based on an interpretation of the CEA, should be given no weight. Further, FBC is not seeking recovery of costs for any amenities used by EV drivers, so the BCUC should not be making any determinations related to the recovery of costs of such amenities.

17. BCOAPO submits that “the BCUC should assess whether the cost incurred with respect of a prescribed undertaking, as well as whether the cost are reasonable and prudently incurred.”³³ There has been no suggestion in this proceeding that any of FBC’s costs incurred were not prudently incurred. As submitted by BCSEA-VEVA, “CEA s.18(4) requires a public utility that carries out a prescribed undertaking to submit a report to the minister respecting the prescribed undertaking. This structure contemplates that oversight of the utility’s spending on a prescribed undertaking (for example, to prevent ‘gold-plating’ by the utility) is provided by the minister not by the BCUC.”³⁴

³¹ Flintoff Final Argument, p. 15.

³² ChargePoint Final Argument, p. 4.

³³ BCOAPO Final Argument, p. 7.

³⁴ BCSEA-VEVA Final Argument, p. 10.

18. Flintoff submits that there should be “a price cap on what the utility can charge.”³⁵ There is no basis in the words of the CEA or GGRR that support such a notion. It would be an error of law to impose a cap on the costs a utility can recover for EV charging stations that are prescribed undertakings.

PART THREE: FBC’S PROPOSED RATES ARE JUST AND REASONABLE

A. Introduction

19. FBC’s proposed rates are largely supported by interveners. The issues raised by interveners in their arguments and addressed below are as follows:

- (a) In reply to CEC and Flintoff, FBC’s proposed exemption from general rate increases is just and reasonable
- (b) In reply to BCOAPO, FBC will review the performance of RS 96 periodically but FBC notes that there should also be consideration for regulatory efficiency.
- (c) In reply to Flintoff, FBC’s proposed levelized rates are just and reasonable.
- (d) Flintoff’s other proposals are without merit.

B. Exemption of RS 96 from General Rate Changes is Just and Reasonable

20. The CEC accepts that FBC has reasonably designed RS 96 to recover FBC’s cost of service,³⁶ but argues that RS 96 should not be exempt from general rate changes.³⁷ Flintoff also argues that RS 96 should not be exempt.³⁸ FBC disagrees.

21. First, FBC reiterates that its proposed levelized rate already includes reasonable estimates of the annual general rate change to RS 21, which represents the cost of electricity in the calculation, and also includes inflation factors for O&M and property taxes which would

³⁵ Flintoff Final Argument, p. 16. The evidence not on the record in this proceeding referenced by Flintoff on page 16 of its argument should be given no weight.

³⁶ CEC Final Argument, p. 9, paras. 39-40 and p. 13, para. 59.

³⁷ CEC Final Argument, pp. 13-14.

³⁸ Flintoff Final Argument, p. 6.

factor into a general rate change impacting all rates.³⁹ The CEC agrees that FBC's proposed rate reasonably recovers FBC's costs of service⁴⁰ and recommends that the BCUC approve the proposed rate.⁴¹ This is inconsistent with making RS 96 subject to general rate changes. If RS 96 were to be subject to general rate changes, then the various inflationary factors would need to be removed. However, FBC submits that its inflationary factors are reasonable estimates, so that there is no need to make RS 96 subject to general rate increases.

22. Second, FBC's proposed rate is designed to reasonably recover FBC's cost of service over a 10-year period. The CEC agrees that FBC has reasonably forecast its cost of service⁴² and, indeed, no intervener has taken issue with FBC's cost of service assumptions beyond noting the potential uncertainty. The uncertainty can be addressed through periodic reviews, as FBC has proposed. As FBC's cost of service will be reasonably recovered, as confirmed through periodic reviews, there is no need to make RS 96 subject to general rate changes.

23. Third, exposing RS 96 to general rate changes will not necessarily increase the accuracy of cost recovery of the stations. This is because the general rate change based on escalating overall utility costs is unlikely to be a good proxy for EV charging infrastructure costs which are materially different in nature.⁴³ FBC's general rate increase is based on FBC's overall revenue requirement, not just for the EV charging stations. Therefore, there is no direct or one-to-one connection between the cost of service of EV stations and FBC's general rate increase.⁴⁴

24. Finally, unlike other customer groups, EV charging customers represent a relatively new use of electricity that is still overcoming market barriers. It is important from a policy perspective and for the purposes of increasing FBC's load for the benefit of all customers, that these market barriers be overcome, and EV use be encouraged. Having a flat rate at this time will be beneficial to help overcome market barriers and encourage EV use. A consistent rate

³⁹ Exhibit B-7, BCUC IR1 6.3.1.

⁴⁰ CEC Final Argument, p. 9, paras. 39-40 and p. 13, para. 59.

⁴¹ CEC Final Argument, p. 1, para. 2.

⁴² CEC Final Argument, p. 9, paras. 39-40 and p. 13, para. 59.

⁴³ Exhibit B-7, BCUC IR1 6.3.1.

⁴⁴ Exhibit B-17, BCOAPO IR2 28.2.1.

over time will provide cost certainty and a stable pricing environment that will benefit EV customers.⁴⁵ This will ultimately benefit all of FBC's customers as EV use will be encouraged and increased load will help reduce rates, all else being equal.

25. FBC therefore submits that its proposal to include inflationary factors within RS 96 so that the levelized rate is not subject to general rate changes is just and reasonable.

C. RS 96 Performance Subject to Periodic Review

26. BCOAPO's submissions emphasize the need for periodic review of the performance of RS 96 as proposed by FBC. BCOAPO submits in particular that the "updated forecasts provided for purposes of the Annual Reviews should address the entire cost of service analysis period to 2030."⁴⁶ While FBC will be considering the 10-year period of the rate (rather than the just one year), FBC emphasizes that there is also a need for regulatory efficiency. FBC is not proposing that each Annual Review be used to conduct a full review of the rate design of RS 96 every year, nor would that be reasonable. FBC expects that the review of RS 96 in its Annual Reviews should focus on material changes, if any, and should proceed efficiently without undue duplication of the matters canvassed in this proceeding.

D. Proposed Levelized Rates are Just and Reasonable

27. Flintoff argues for a "floating" rather than levelized rate.⁴⁷ Flintoff's submissions reflect a number of errors or misunderstandings and are generally without merit. FBC addresses the main points raised by Flintoff below.

28. First, Flintoff's discussion of the EV industry on page 11 and reference to a fuel cost ratio between EV and gas vehicles on page 16 of Flintoff's argument is new evidence, rather than argument, and should not be given any weight.

29. Second, a non-levelized rate structure would deter EV use and would be unreasonable. A levelized rate is important because FBC is reasonably forecasting increasing use of its EV

⁴⁵ Exhibit B-5, p. 12; Exhibit B-7, BCUC IR1 6.6; Exhibit B-17, BCOAPO IR2 28.1; Exhibit B-20, Flintoff IR2 1.1.

⁴⁶ BCOAPO Final Argument, p. 16.

⁴⁷ Flintoff Final Argument, pp. 4-5.

charging stations over the 10-year period as EV sales increase.⁴⁸ With relatively low use in the early years of the station, a non-levelized rate would need to be much higher to recover the annual cost of service. A non-levelized rate would therefore increase the rate in the earlier years. This would put the rates for FBC's charging stations out of step with the rates for other charging stations in B.C. and across Canada, which would deter use of FBC's charging stations. This would in turn reduce revenue from FBC's EV charging stations to the detriment of all of FBC's customers.

30. Third, contrary to Flintoff,⁴⁹ levelized rates place less risk on other utility customers than a non-levelized alternative. By having a levelized rate, FBC is able to have a rate similar to market rates over the life of the stations that will encourage EV use and therefore increase the likelihood of revenue to recover its costs. A non-levelized rate would deter use of the stations and increase the risk that FBC could not recover its cost of service.

31. Fourth, a "floating rate" would not eliminate the Flow through deferral account as suggested by Flintoff.⁵⁰ FBC's Flow through deferral account is part of FBC's multi-year rate plan ("MRP") and would still be needed to capture the variances between actual and forecast costs and revenues, as has been approved by the BCUC.⁵¹

32. Fifth, Flintoff's argument that a levelized rate may not be consistent with section 18 of the CEA is in error.⁵² Section 18 of the CEA does not require that the EV charging station rate be sufficient to recover FBC's costs in each fiscal year. Rather, it requires FBC's costs be recovered in rates – generally - each fiscal year. This will be accomplished by FBC's rates in total, as discussed on page 33 of FBC's Final Submission.

33. Sixth, Flintoff's arguments related to impacts on other service providers should be rejected:

⁴⁸ Exhibit B-16, Attachment 20.6, p. 6, l. 11.

⁴⁹ Flintoff Argument, p. 5.

⁵⁰ Flintoff Final Argument, p. 5.

⁵¹ Exhibit B-5, p. 23.

⁵² Flintoff Final Argument, pp. 6-7.

- (a) Flintoff offers a novel interpretation of section 59 of the UCA that the BCUC must set rates that “must not disadvantage others providing service of the same description.”⁵³ However, Section 59 of the UCA is focussed on the impact of rates of a public utility on the customers or potential customers of the public utility. For instance, section 59(2)(b) says that the public utility must offer the same service to all persons “under substantially similar circumstances and conditions.” Section 59 does not say that the utility must not disadvantage “other service providers of the same description”.
- (b) FBC cannot agree with Flintoff that FBC has an advantage over other service providers if the BCUC allows its costs into rate base.⁵⁴ By “allowing the costs in rate base”, FBC assumes that Mr. Flintoff is referring to allowing FBC to recover its costs. Other service providers will also recover their costs in rates – they simply have no need for a “rate base” as they are not regulated and are free to charge whatever the market will bear. Furthermore, FBC’s proposed levelized rates are generally consistent with market rates, as discussed on pages 30-31 of FBC’s Final Argument.

34. Ultimately, Flintoff appears to be questioning whether FBC should have a role in the EV station market. However, by making EV charging stations a prescribed undertaking, the government has mandated that public utilities such as FBC can play a role in the EV charging station market and must have their costs recovered in rates. The “site limit” criteria in section 5 of the GGRR also shows that the government turned its mind to the extent of that role. As FBC’s role in the EV charging station market has been determined by legislation, Flintoff’s arguments should be rejected.

E. Other Flintoff Arguments Are Without Merit

35. Other arguments raised by Mr. Flintoff should be rejected:

- (a) **80 Percent Charge Cap:** Flintoff supports the option of a time-based rate that allows only an 80% battery charge.⁵⁵ If Flintoff wished to pursue this “option” he should have asked the necessary IRs on the topic. As no such questions were asked, there is no evidence on the record to support this option or to indicate if it is even feasible.

⁵³ Flintoff Final Argument, p. 6.

⁵⁴ Flintoff Final Argument, p. 6.

⁵⁵ Flintoff Final Argument, p. 7.

- (b) **Idling Fee:** Flintoff supports use of an idling fee.⁵⁶ The extraneous evidence referenced on page 9 of Flintoff’s argument that is not on the record should not be given weight. There is no evidence of any need for an idling fee. FBC will continue to monitor its EV charging stations and will propose an idling fee if needed.
- (c) **Level of FLO Support:** Flintoff “would support a minimum of Tier 1 service only be provided at this time.”⁵⁷ The level of support from FLO is not an issue in this proceeding or a matter to be determined by the BCUC. Page 10 of Flintoff’s submission consists of evidence not on the record in this proceeding and should be given no weight.

Part Four: Conclusion

36. FBC submits that its Application is well supported by the evidence and submissions in this proceeding and enjoys broad support from interveners. FBC requests that the BCUC grant the approvals sought as set out in the draft final order provided in Attachment 20.6C to Exhibit B-16 and paragraph 5 of FBC’s Final Submission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: April 13, 2021

[original signed by Chris Bystrom]

Christopher R. Bystrom

Counsel for FortisBC Inc.

⁵⁶ Flintoff Final Argument, p. 9.

⁵⁷ Flintoff Final Argument, p. 10.