

Aug 15, 2019

BCUC Completes EV Charging Inquiry With Recommendations About Regulated Utilities' Role

By David Stevens

In June 2019, the British Columbia Utilities Commission (BCUC) issued the Phase 2 Report from its Inquiry into the Regulation of Electric Vehicle (EV) Charging Service. This Report looked at the role that might be played by regulated utilities in providing EV charging services and concluded that their participation should be limited, with appropriate protections for their ratepayers and for unregulated market participants. The Report includes a number of considerations and recommendations for the B.C. government to take into account when directing the BCUC about how to regulate utility involvement in this activity.

As described in earlier posts ([here](#) and [here](#)), the BCUC EV charging Inquiry was aimed at examining whether, and how, EV charging in British Columbia should be regulated, and it was conducted in two phases.

In Phase 1, the BCUC looked at the following questions:

- Is a person who offers EV charging services a “public utility” under applicable legislation?
- Should entities not otherwise public utilities supplying electricity to EV end users be regulated at all?

In its Phase 1 Report, the BCUC concluded that:

- The EV charging market is not a monopoly because there is more than one service provider, and the public EV charging market does not exhibit monopoly characteristics.
- A person providing EV charging services for compensation is a “public utility” under applicable legislation, because these services involve providing electricity “for compensation,” even if the “compensation” is indirect (such as a parking fee).
- The regulation of all EV charging services, to the extent that the provider is not already considered to be a public utility under applicable legislation, is not required to protect the public interest.

Following the recommendations made in Phase 1, the B.C. Minister of Energy, Mines and Petroleum Resources issued a Ministerial Order and the BCUC issued an exemption from regulation for persons to provide public EV charging services for compensation if they are not already public utilities.

Soon after the Phase 1 Report was issued, the BCUC moved on to Phase 2, which was intended to look at questions around the participation of regulated utilities in the EV charging services market.

In a procedural conference early in Phase 2, the government of B.C. stated that it had reached a conclusion that “non-exempt public utilities” will invest and will be allowed to recover costs in delivering EV charging services. B.C.’s Ministry of Energy, Mines and Petroleum Resources indicated that the province “strongly supports investments in electric vehicle charging services by those non-exempt public utilities” and “it would be appropriate for non-exempt public utilities to recover those costs from ratepayers.” This led the BCUC to issue a Scoping Decision indicating that Phase 2 of the Inquiry would not examine any questions of whether regulated utilities “should” participate in the EV charging services market.

In Phase 2 of the Inquiry, the BCUC looked at the role of “non-exempt public utilities” (utilities who provide rate regulated services) in the EV charging services market. After considering submissions from a wide

variety of interested parties, the BCUC issued its Phase 2 Report, setting out its recommendations on the role that “non-exempt utilities” can play, and the way that this might be regulated.

In general, the BCUC finds that only a narrow role is appropriate for regulated utilities in providing EV charging services. Examples given are infrastructure that would not otherwise be constructed by the private sector (remote areas and multi-residential buildings) and highway charging infrastructure. The BCUC emphasized its view that the “playing field” must remain level, so that regulated utilities do not use their advantages to “crowd out” exempt utility investment.

As summarized in an Executive Summary of the Phase 2 Report, the BCUC is providing a number of specific recommendations for the B.C. government to consider in terms of how to regulate EV charging services by “non-exempt utilities.” The BCUC highlights that regulatory oversight can “mitigate ratepayer risk and potential impact on exempt distributors.”

The BCUC indicates that the government will have to decide how prescriptive it wishes to be in terms of the level of direction provided to the BCUC to guide its regulation of regulated utility EV charging activities. In this regard, the BCUC provides recommendations to the government for two scenarios: (i) where the BCUC is provided broad direction and discretion to regulate utility EV charging services; and (ii) where the BCUC is provided specific direction about how to regulate these services.

Under the first scenario (non-prescriptive, high level direction to the BCUC), the following are some items that the government could direct the BCUC to implement:

- Ensure that exempt utilities receive non-discriminatory and timely access to interconnection services
- Require non-exempt distributors to develop Resource Plans for EV charging infrastructure investments.
- Require non-exempt public utilities to develop a separate rate and tariff (or a separate class of service) for EV charging service.

Under the second scenario (specific direction to the BCUC), the BCUC recommends that the prescriptive direction from the government should be defined as narrowly as possible “with monetary caps and/or time limits,” stipulating such items as which costs can be included, and specific geographic locations where non-exempt public utilities can provide EV charging service.

There has not yet been any direction from the B.C. Ministry of Energy, Mines and Petroleum Resources in response to the Phase 2 Report.

Author



David Stevens
Partner
T 416.865.7783
dstevens@airdberlis.com

This communication offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.