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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-129-08A

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

A Proposal by the Insurance Corporation of British Columbia to
Amend Its Basic Insurance Tariff to Include the Courtesy Car Adjustment Program

BEFORE: A.A. Rhodes, Commissioner September 25, 2008
P.E. Vivian, Commissioner

O R D E R

WHEREAS:

- A. On March 29, 2007, Insurance Corporation of British Columbia ("ICBC") submitted, to the Commission, its first Application Respecting Rate Design for Basic Insurance (the "Rate Design Application" or "RDA"); and
- B. In January 2008, ICBC issued communications advising that the Courtesy Car Adjustment program (the "Adjustment"), in practice since 1999, was not included in the Basic Insurance Tariff (the "Tariff"), and therefore required discontinuance; and
- C. By letter of February 22, 2008, the Automobile Retailers Association of British Columbia ("ARA"), on behalf of several affected companies, made complaint to the Commission concerning ICBC's announced intention to terminate the Adjustment program; and
- D. By letter of March 14, 2008, the Commission requested ICBC to comment on the ARA complaint; and
- E. By letter of March 31, 2008, ICBC responded to the Commission, indicating that it had determined that the concerns expressed by the ARA warranted further review. ICBC undertook to file a proposal to address the concerns raised by the ARA within 90 days; and
- F. By letter of April 8, 2008, the ARA wrote to the Commission, commenting on the March 31, 2008 ICBC letter. The ARA focused the issue on whether ICBC had the authority to withdraw from the Adjustment due to it not being within the Tariff. The ARA also expressed concern that customers renewing policies prior to a determination could be financially harmed; and

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- G. By letter of May 2, 2008, ICBC responded to the April 8, 2008 ARA letter. ICBC determined that it would be applying to the Commission to continue the Adjustment program. ICBC stated its intention to continue the Adjustment to customers until the Commission makes a determination on the matter; and
- H. By letter of May 21, 2008, the ARA responded to the ICBC letter of May 2, 2008, seeking a “clear commitment from ICBC not to discontinue the Adjustment, until either the ARA and ICBC amend the agreement to their mutual satisfaction, or until the Commission, or court of competent jurisdiction make a final determination as to whether the 1999 agreement has been breached, and if so, what the appropriate remedy is”; and
- I. By letter of May 29, 2008, ICBC advised the Commission that it had sent communications to affected insurees informing them that the Adjustment program was under review. ICBC stated that it would process any adjustments as appropriate to the Commission’s eventual determination on the matter; and
- J. By letter of June 20, 2008, the ARA responded to the May 29 ICBC letter to the Commission. The ARA noted ICBC’s refusal to address the question of whether it had authority for the position it took in January 2008 with respect to the program. Further, the ARA expressed the view that it did not see the Commission as having jurisdiction to review vary or end agreements between ICBC and industry, stating that any termination of the agreements could lead to litigation to seek compensation from ICBC; and
- K. By letter dated June 24, 2008, ICBC submitted its proposal (the “Tariff Amendments”) to incorporate the Adjustment into the Tariff. The Tariff Amendments retain the terms and conditions of the existing Adjustment for inclusion in the Tariff; and
- L. By letter of July 11, 2008, the Commission invited the ARA to comment on proposed Tariff amendments; and
- M. By letter dated July 31, 2008, the ARA replied to the Commission. The ARA wished for a determination of whether the matter is within Commission jurisdiction. They maintain the view that the Adjustment is a “permanent, private agreement” between the industry and ICBC. The ARA posed two questions concerning whether ICBC could amend the agreement via an application to the Commission, whether the Commission

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has jurisdiction over the matter, plus three concerning clarifications of terminology used by ICBC in the Tariff Amendments. Also requested was confirmation that the Tariff Amendments would not alter the rebates payable under the existing agreement; and

- N. By letter dated August 8, 2008, the Commission invited ICBC to respond to the ARA letter; and
- O. By letter dated August 22, 2008, ICBC provided its response, and confirmed that the Tariff Amendments will not change the terms and conditions of the Adjustment. ICBC points to Section 63 of the *Act* as requiring inclusion in the Tariff. ICBC disagreed with the characterization of the Adjustment as a “permanent, private agreement.” ICBC provided clarification of the three terms in question in the ARA letter of July 31; and
- P. The Commission Panel has reviewed and considered the proposed Tariff Amendments submitted by ICBC.

NOW THEREFORE, and for the Reasons attached, the Commission orders as follows:

1. The proposed Tariff Amendments, to incorporate the Courtesy Car Adjustment program into the ICBC Basic Insurance Tariff, are approved.
2. ICBC is to ensure that all affected insurees were charged the appropriate rates, and/or received applicable refunds, based on the Adjustment program having been continuously in effect.
3. Reasons for Decision accompany this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of September 2008.

BY ORDER

Original signed by:

A.A. Rhodes
Commissioner

Attachment

Insurance Corporation of British Columbia ("ICBC") to
Amend Its Basic Insurance Tariff to Include the Courtesy Car Adjustment Program

REASONS FOR DECISION

In January of 2008, the Insurance Corporation of British Columbia ("ICBC") issued communications announcing the pending termination of its ICBC Courtesy Car Adjustment (the "Adjustment") program. The program affects basic insurance paid on vehicles used by garage and rental vehicle operators as courtesy cars. The Adjustment pro-rates basic insurance charges to the proportion of days the applicable vehicles are used as courtesy cars as opposed to u-drives (rentals). ICBC's rationale for termination was the Adjustment's non-compliance with the approved, Basic Insurance Tariff (the "Tariff").

By letter of February 22, 2008, the Automobile Retailers Association of British Columbia ("ARA"), on behalf of a subset of affected companies, complained to the Commission concerning the announced termination of the Adjustment program. The ARA stated that it considered the Adjustment program to be a private, permanent agreement between ICBC and industry.

By letter of May 21, 2008, the ARA sought a commitment that ICBC would not discontinue the Adjustment program until the Commission, or court of competent jurisdiction, makes a final determination concerning the agreement. (Significant communications on the matter are recited in the attached Order.)

These Reasons address the question of Commission jurisdiction to rule on the matter and to make a determination concerning the status of the agreement with respect to the Tariff.

The *Insurance Corporation Act*, R.S.B.C 1996, Chapter 228, and the *Utilities Commission Act*, R.S.B.C. 1996, Chapter 473 ("*UCA*"), are specific concerning the regulation of ICBC by the Commission. The *UCA* applies broadly to ICBC, with specified exceptions. The *Insurance Corporation Act*, Section 44 (1), details the sections of the *UCA* applicable to ICBC.

The answer to whether the Commission has jurisdiction over a private agreement between a regulated entity and another party is evident from Section 110 of the *UCA*:

The powers given to the commission by this Act apply;

- (a) even though the subject matter about which the powers are exercisable is the subject matter of an agreement or another Act, and
- (b) in respect of service and rates, whether fixed by or the subject of an agreement or other Act, or otherwise, and
- (c) if the service or rates are governed by an agreement, whether the agreement is incorporated in, or ratified, or made binding by a general or special Act, or otherwise.

Section 110 therefore gives the Commission jurisdiction where agreements exist between a regulated entity and a third party in respect of a regulated activity.

Section 35(c) of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, Chapter 231, allows ICBC to establish discounts from premiums paid by owners or drivers based on “the use to which it will be put or any other basis approved by the commission.” The Adjustment is a discount based on use, requires Commission approval, and therefore is within Commission jurisdiction.

As pointed out by ICBC in its submission of August 22, 2008, Section 63 of the *UCA* requires that all rates established by it must be filed with the Commission. Section 63 (3) requires that those rates are the only ones that may be collected, charged, or enforced. The Adjustment creates a rate for a type of service that is collected, charged, and enforced by ICBC. The Adjustment’s absence from the Tariff is not consistent with Section 63. Therefore, the Adjustment must in some way be filed with the Commission.

Section 61 of the *UCA* is central to this Decision:

- 61 (1) A public utility must file with the commission, under rules the commission specifies and within the time and in the form required by the commission, schedules showing all rates established by it and collected, charged or enforced or to be collected or enforced.
- (2) A schedule filed under subsection (1) must not be amended without the commission's consent.
- (3) The rates in schedules as filed and as amended in accordance with this Act and the regulations are the only lawful, enforceable and collectable rates of the public utility filing them and no other rate may be collected, charged or enforced.

Incorporating the Adjustment into the Tariff through a Tariff Amendment will make the program compliant with Section 61 of the *UCA*.

Section 61(1) requires that ICBC file schedules showing all rates established by it and collected, charged, or enforced. The Adjustment must be part of the Tariff. Section 61(3) is specific that “the rates in schedules as filed and amended are the only lawful, enforceable, and collectable rate and no other rate may be collected, charged, or enforced.” The Adjustment program has been in practice since before ICBC was regulated by the Commission. It was not previously in the Tariff, and therefore not in compliance with Sections 61(1) and 61(3).

The Commission determines that incorporation of the Adjustment program into the Tariff is in compliance with Sections 61(1) and 61(3), and therefore is in the public interest.