



**ORDER NUMBER
G-254-22**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Toby Creek Utilities Co. Ltd.
Application for Approval of Rates and Terms of Service

BEFORE:

D. M. Morton, Panel Chair
A. C. Dennier, Commissioner
A. Pape-Salmon, Commissioner

on September 14, 2022

ORDER

WHEREAS:

- A. On September 21, 2021, Toby Creek Utilities Co. Ltd. (TCU) filed an application with the British Columbia Utilities Commission (BCUC) for approval of its proposed rates and terms of service, pursuant to sections 58 to 61 of the *Utilities Commission Act* (Application);
- B. In the Application, TCU requests the following:
 - 1. Approval for proposed rates and terms of service as described in the Application and set out in TCU's proposed Electric Tariff; and
 - 2. Directions with regard to future proceedings, filings or reports required by the BCUC;
- C. By Order G-336-21 and Order G-84-22, dated November 19, 2021 and March 21, 2022, respectively, the BCUC established a regulatory timetable that included intervenor registration and two rounds of BCUC and intervenor information requests (IRs), and written final and reply arguments; and
- D. The BCUC has considered the Application, evidence and submissions filed in the proceeding and makes the following determinations.

NOW THEREFORE pursuant to sections 58 to 61 of the *Utilities Commission Act*, the BCUC orders as follow:

1. The proposed TCU Electric Tariff is approved as laid out in the Reasons attached.
2. A flow-through rate adjustment mechanism is approved for TCU, as outlined in the Reasons.
3. TCU is directed to file amended tariff pages **which reflect changes made by British Columbia Hydro and Power Authority (BC Hydro) to Rate Schedule (RS) 1301, 1501 and 1601** within 10 business days of the effective date of all BC Hydro rate changes for review and approval by the BCUC to verify the accuracy of the changes. In the event that TCU does not file amended tariff pages within 10 business days of the effective date of the BC Hydro rate change, TCU's rate changes will not become effective until such time as otherwise approved by the BCUC.
4. TCU must file Annual Reports and financial statements which summarize the results for the electric utility operations within 60 days of TCU's financial year-end, in a form to be developed in consultation with BCUC staff.
5. TCU is directed to comply with all other directives in the Reasons issued concurrently with this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of September 2022.

BY ORDER

Original signed by:

D.M. Morton
Commissioner

Attachment

Toby Creek Utilities Co. Ltd.
Application for Approval of Rates and Terms of Service

REASONS FOR DECISION

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Executive Summary

Toby Creek Utilities Co. Ltd. (TCU) is a small local electrical utility providing service to parts of the Panorama Mountain Resort area near Invermere, British Columbia. TCU was established and began operations as part of the development of the Panorama resort and is wholly owned by Panorama Mountain Village Inc. d.b.a. Panorama Mountain Resort (Panorama).

On September 21, 2021, TCU filed an application with the British Columbia Utilities Commission (BCUC) pursuant to sections 58 to 61 of the *Utilities Commission Act* (UCA), seeking approval of its proposed rates and terms of service modelled on British Columbia Hydro and Power Authority (BC Hydro) rates and electric tariff. The BCUC established a regulatory process that included two rounds of information requests (IRs) and written final arguments. No intervener IRs or final arguments were submitted, and no letters of comment were received.

TCU considers the regulatory expenses associated with a detailed revenue requirements review, unique tariff, and periodic rate schedule amendments would impose significant costs on TCU's limited customer base. TCU submits that its proposed Electric Tariff, which is the same as BC Hydro's for the same service, is consistent with the practice of a number of small utilities in British Columbia that adopt rates which are the same as or similar to those of larger utilities operating in the vicinity, or from which such small utilities obtain their power.

The Panel approves the proposed TCU Electric Tariff that incorporates by reference BC Hydro's rate schedules which have previously been approved by the BCUC. Further, the Panel approves a flow-through rate adjustment mechanism that enables reference to current and future BC Hydro schedules, as aligned with the equivalent TCU customers, without a new application to the BCUC. There is no evidence before the Panel that ratepayers oppose the proposed rate design or resulting rates, and the shareholder of TCU is satisfied that the proposed rate design will provide them with the opportunity to earn a fair return as required by section 59 of the UCA.

The Panel directs TCU to file amended tariff pages within 10 business days of the effective date of all BC Hydro rate changes for approval, subject to review by the BCUC to verify the accuracy of the changes, and subject to review by the BCUC in the event of a complaint by an affected party within 60 days of the effective date of amended rates. If TCU does not file the amended tariff pages within 10 business days of the effective date of the BC Hydro rate change, TCU's rate changes will not become effective until such time as otherwise approved by the BCUC.

TCU also requests directions with regard to future proceedings, filings or reports required by the BCUC. The Panel has determined that TCU's rate proposal will provide for an opportunity to earn a fair return by the TCU shareholder, approved TCU's Electric Tariff based on BC Hydro's equivalent rates schedules, and provided for a mechanism to reflect changes made to the BC Hydro rates. Therefore, we expect TCU to submit an appropriate application for BCUC review and approval if and when TCU seeks to update the way its tariff is calculated or requests amendments to any approvals or determinations set out in this decision.

In regard to future reports required by the BCUC, the Panel directs TCU to file Annual Reports and financial statements which summarize the results for the electric utility operations within 60 days of TCU's financial year-end, in a form to be developed in consultation with BCUC staff.

1.0 Application and Regulatory Context

1.1 Approvals Sought and TCU Background

On September 21, 2021, Toby Creek Utilities Co. Ltd. (TCU) filed an application with the British Columbia Utilities Commission (BCUC) for proposed rates and terms of service modelled on British Columbia Hydro and Power Authority (BC Hydro) rates and electric tariff.¹

TCU seeks approval, pursuant to sections 58 to 61 of the *Utilities Commission Act* (UCA), of the following:

1. TCU's proposed rates and terms of service as described in the Application and set out in TCU's proposed Electric Tariff and discussed further in TCU's responses to BCUC information requests (IRs) in this proceeding.²
2. TCU also requests directions with regard to future proceedings, filings or reports required by the BCUC.³

TCU is a small local electrical utility providing service to parts of the Panorama Mountain Resort area near Invermere, British Columbia (BC).⁴ TCU is wholly owned by Panorama Mountain Village Inc. d.b.a. Panorama Mountain Resort (Panorama).⁵ TCU was established and began operations as part of the development of the Panorama resort.⁶ TCU provides electrical service to Panorama, Panorama-related companies, and other commercial customers in the Panorama Mountain Resort area, including strata corporations and strata units which serve as rental accommodations for resort guests when not being used by the strata units' respective owners.⁷ TCU confirms that it does not have any residential customers as it does not offer service directly to any dwellings.⁸ TCU has no generation assets and its electricity supply is purchased from BC Hydro.⁹

1.2 Regulatory Process

By Orders G-336-21 and G-84-22 dated November 19, 2021 and March 21, 2022, respectively, the BCUC established the regulatory timetable, which included two rounds of BCUC IRs and TCU's written final argument and reply arguments. TCU filed its written final argument on June 2, 2022, and no reply arguments were filed.

Corix Utilities Inc. was the only registered intervener in the proceeding; however, it did not submit any IRs or a final argument. No interested parties registered and the BCUC did not receive any letters of comment from the public.

1.3 Legislative Framework

TCU filed the Application pursuant to sections 58 to 61 of the UCA. The UCA sets out the framework for the BCUC's approval of public utility rates, which provides, in part, the following:

¹ Exhibit B-1, p. 2.

² Final Argument, Para. 1.

³ Final Argument, Para. 1.

⁴ Exhibit B-1, p..1.

⁵ Exhibit B-1, p..1.

⁶ Exhibit B-5, BCUC IR 10.4.

⁷ Exhibit B-1, p. 1.

⁸ Exhibit B-5, BCUC 5.1.

⁹ Exhibit B-1, p. 1.

- Section 59(5) defines what an “unjust” or “unreasonable” rate is while section 59(4) states that the determination of what is “unjust” or “unreasonable” is a question of fact of which the BCUC is the sole judge; and
- Section 61(5) defines when the BCUC can direct an inquiry into the new schedule of rates having regard to the setting of a rate that is not unjust or unreasonable while section 61(6) states the BCUC may order a refund or confirm the increase of the rate or part of it after the inquiry.

1.4 Examples of Other Small BCUC-Regulated Utilities

A number of small public utilities in British Columbia regulated by the BCUC charge rates which are the same as or based on the rates of larger utilities operating in the same area, or from which the small utilities receive their power.¹⁰ Examples include the following:

Silversmith Power & Light Corporation (Silversmith), an investor-owned generation and distribution electric utility operating in the community of Sandon, located in the West Kootenay region of BC.¹¹ By Order G-144-15, the BCUC approved a rate-setting mechanism that generally matches Silversmith’s rates, fees and terms and conditions of service to those of BC Hydro, as BC Hydro serves areas in the vicinity of Silversmith’s customers.¹²

Corix Multi Utility Services Inc. (Formerly Terasen Multi-Utility Services Inc.) operates natural gas and electric utility distribution systems in the Sonoma Pines Subdivision (Sonoma Pines) in Westbank, BC.¹³ By Order C-13-05, the BCUC approved natural gas and electric charges for Sonoma Pines that maintain customer rates at levels equivalent to those of FortisBC Energy Inc. (Formerly the Terasen Gas Inland Division) and BC Hydro, respectively, adjacent to Sonoma Pines.¹⁴

Corix Multi Utility Services Inc. (Formerly Terasen Multi-Utility Services Inc.) operates a natural gas distribution system to customers at the Sun Rivers Resort Community (Sun Rivers) near Kamloops, BC. By Order G-68-05, the BCUC approved natural gas and electric charges for Sun Rivers that maintain customer rates at levels equivalent to those of FortisBC Energy Inc. (Formerly the Terasen Gas Inland Division) and BC Hydro, respectively, adjacent to Sun Rivers.¹⁵

2.0 Application Approvals

2.1 Background

TCU’s system delivers electricity to the Panorama Mountain Resort area via its 25,000 Volt (V), three-phase distribution grid near Invermere.¹⁶ An overview of the TCU service area is outlined in yellow below:

¹⁰ Order G-144-15; Exhibit B-1, p.21.

¹¹ Silversmith Power & Light Corporation 2015 Revenue Requirement and Rates Application Decision and Order G-144-15, p. 1.

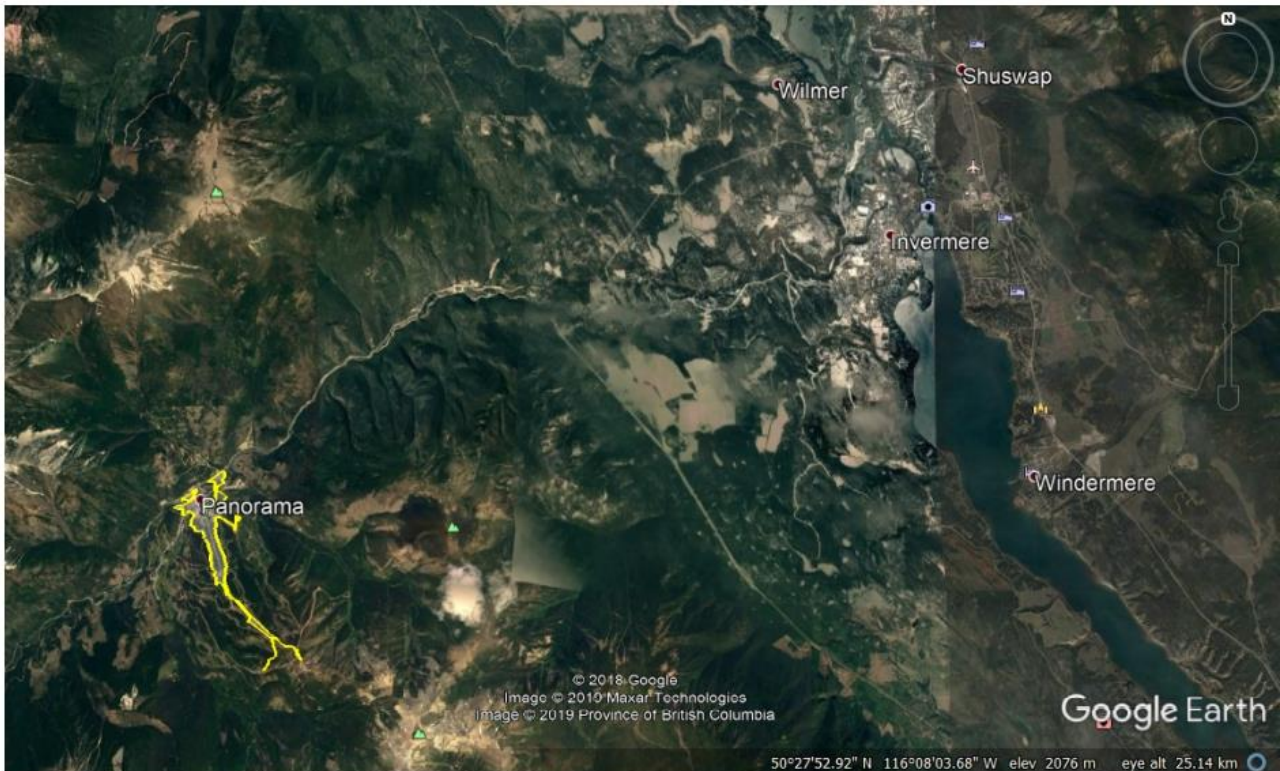
¹² Exhibit B-1, p. 21.

¹³ Order C-13-05.

¹⁴ Order C-13-05, Directive 4 and 7.

¹⁵ Order G-68-05, Directive 2 and 3.

¹⁶ Exhibit B-1, pp. 7–8.



TCU purchases its entire electricity supply from BC Hydro through an interconnection point to BC Hydro's distribution system located near the Sewage Lift Station on the north side of Toby Creek, supplied to TCU and metered at primary voltage.¹⁷ TCU uses 50 transformers in its system to step-down its primary voltage of 25,000V to secondary voltage.¹⁸ The fleet of pad-mount transformers supply electricity to approximately 77 customer connections¹⁹ at operating secondary voltages of 120/208V, 120/240V, 600V, 480V, or 4,160V.²⁰ The 77 customer connections reflect TCU's total number of customer accounts and include 32 Panorama-affiliated connections and 45 non-Panorama connections that comprise of private strata units and commercial customers.²¹ Customer connections are metered at secondary voltage.²²

2.2 Transformer Replacement Strategy

TCU states that it has several transformers in service that are 40 or more years of age and anticipates these transformers are approaching end-of-life.²³ Of the 50 total transformers in the TCU system, 46 are TCU-owned distribution transformers and four are BC Hydro-owned transformers rented by TCU.²⁴ TCU identifies 19 total transformers near end-of-life, 18 of which are owned by TCU. TCU assumes that the one end-of-life BC Hydro-owned transformer will be replaced by BC Hydro upon failure.²⁵

¹⁷ Exhibit B-1, p. 8.

¹⁸ Exhibit B-5, BCUC IR 1.1 and Attachment 1.1.

¹⁹ Exhibit B-1, p. 19.

²⁰ Exhibit B-1, pp. 9–10.

²¹ Exhibit B-1, Footnote 2, p. 7, p. 13.

²² Exhibit B-1, p. 9.

²³ Exhibit B-1, p. 10.

²⁴ Exhibit B-5, Attachment 1.1.

²⁵ Exhibit B-7, BCUC IR 3.3.

TCU submits that for the anticipated replacement cycle of one transformer per year, it expects costs starting at \$35,000 per 300 Kilovolt-Amperes (kVa) unit in 2022 and potentially rising to \$90,000 by 2026.²⁶ TCU states that transformers are selected for replacement based on age, recent poor dissolved gas analysis (DGA) test results, physical condition of each transformer and loading over the past 15 years.²⁷ TCU does not recommend an immediate replacement of all end-of-life transformers as a staggered approach lowers upfront capital costs and the risk of multiple coincident transformer failures.²⁸

TCU explains that it completes testing of its transformer fleet on a two-year cycle.²⁹ On-site DGA sampling and analysis of the TCU-owned transformer fleet was conducted by PCA Valence Engineering Technologies Ltd. in 2018³⁰ and 2020³¹. Further, TCU completes bi-annual visual and thermal inspections of all pad-mount transformers and plans to conduct future inspections of its end-of-life transformers on a quarterly basis. In the future, TCU plans to continue DGA testing and analysis on an annual basis with an increase in the frequency of testing based on recommendations from the testing facility.³²

TCU states that its strategy for transformer spares is to maintain two spare transformers and explains that a spare transformer of each size is therefore not available. One refurbished transformer is currently maintained as a spare to match TCU's fleet of the oldest style of transformers. A second serviceable used transformer can be used to provide immediate replacement in the event of transformer failure at any location.³³ Over the past five years, TCU has experienced three unplanned outages and eight system interruptions due to planned maintenance, such as pole replacement, transformer oil sampling and transformer replacement.³⁴

Most end-of-life transformer assets are located in TCU's oldest distribution area, N83.³⁵ TCU maintains one or more spare transformers for distribution area N83 and submits that it maintains an "appropriate spare" regardless of its suitability to act as a replacement for every type and size of transformer in the TCU system.³⁶ TCU confirms that it has a significant incentive to maintain safe and reliable service beyond that of a typical utility, as Panorama is TCU's owner and largest customer.³⁷ Panorama's resort operations, which include ski lifts, snow-making equipment, and resort amenities more generally would be directly impacted by safety or reliability issues, which could adversely affect Panorama's reputation, as well as TCU's.³⁸

2.3 Load Forecast

TCU provides its historical load from 2019 to 2021 and comprehensive five-year load forecast from 2022 to 2026, for each of its three customer classes, summarized by BCUC in the table below:

²⁶ Exhibit B-5, BCUC IR 7.1.

²⁷ Exhibit B-7, BCUC IR 3.2.

²⁸ Exhibit B-7, BCUC IR 1.3, 1.4.1.

²⁹ Exhibit B-7, Section 4, p. 16.

³⁰ Exhibit B-5, Attachment 1.3A.

³¹ Exhibit B-5, Attachment 1.3B.

³² Exhibit B-7, BCUC IR 2.1.

³³ Exhibit B-5, BCUC IR 1.2.

³⁴ Exhibit B-5, BCUC IR 2.2.

³⁵ Exhibit B-5, BCUC IR 1.2.1.

³⁶ Final Argument, Para. 50.

³⁷ Exhibit B-7, BCUC IR 9.1.3.

³⁸ Exhibit B-7, BCUC IR 9.1.3.

Table 1: TCU's Historical and Forecast Load³⁹

Rate Schedule	2019 actual (kWh)	2020 actual (kWh)	2021 actual (kWh)	2022 forecast (kWh)	2023 forecast (kWh)	2024 forecast (kWh)	2025 Forecast (kWh)	2026 Forecast (kWh)
1601	11912890	9258111	10707471	10921620	11140052	11362853	11590110	11821912
1501	4790346	4347170	4062642	4143894	4226772	4311308	4397534	4485484
1301	368193	350233	352726	359780	366976	374315	381801	389437

TCU forecasts future load growth of approximately two percent annually from 2022 to 2026 to account for Panorama visitation growth and subsequent increase in energy consumption, as well as COVID-19 pandemic recovery.⁴⁰ TCU also cites minor load growth associated with ski lift and snow making additions to Panorama resort. TCU based its demand forecast on load growth observed between 2017 and 2019 prior to the onset of the COVID-19 pandemic.⁴¹

TCU states that it does not anticipate an increase in customer count at any point in the future and expects BC Hydro to service any new customers in the Panorama Resort community. While new residential and commercial developments are planned in the Panorama Resort area, TCU does not intend to service those developments as they are closer to existing BC Hydro service areas.⁴² The energy use of existing TCU customers has not varied significantly for more than five years.⁴³

TCU anticipates increases in peak demand to 7,457 kilowatt hours (kWh) in 2025 and 8,031 kWh in 2027 for potential ski hill infrastructure expansion.⁴⁴ TCU's current peak demand capacity is 8,000 kW, which TCU expects to reach by 2027.⁴⁵ To accommodate future growth in peak demand, TCU plans to engage with BC Hydro to increase TCU's current peak system capacity to 10,000 kW under a new or amended Electrical Service Agreement. Associated costs for engineering and construction upgrades are projected to be approximately \$100,000. This increased capacity would accommodate Panorama's increased energy consumption and will provide general spare capacity for TCU.⁴⁶

2.4 Revenue Requirements

TCU purchases electricity from BC Hydro under Rate Schedule (RS) 1611 under Large General Service Rate then charges its customers based on BC Hydro's RS 1301, 1501 and 1601, resulting in positive net returns (after covering all costs of delivering service).⁴⁷ This is demonstrated by TCU's four-year average net income from Fiscal 2018 to 2021 of \$24,647 / year.⁴⁸ TCU explains that the rates under RS 1301 and 1501 are higher than

³⁹ Exhibit B-5, BCUC IR 4.3.1.

⁴⁰ Exhibit B-5, BCUC IR 4.3.1.

⁴¹ Exhibit B-7, BCUC IR 4.1.

⁴² Exhibit B-5, BCUC IR 4.1 and 4.2.

⁴³ Exhibit B-1, Section 4, p. 14.

⁴⁴ Exhibit B-7, BCUC IR 5.2.

⁴⁵ Exhibit B-7, BCUC IR 5.2.1.

⁴⁶ Exhibit B-7, BCUC IR 5.1.

⁴⁷ Exhibit B-5, BCUC IR 10.1.

⁴⁸ Exhibit B-5, IR 10.2 [(\$14,993 + \$32,917 + \$42,360 + \$8,310)/4].

1611, creating revenues which exceed cost of acquisition.⁴⁹ Additionally, TCU states that BC Hydro grants it “Transformer Owner” and “Primary Potential” discounts, which further increase TCU’s positive margin.⁵⁰ The total margin between electricity purchased from BC Hydro and electricity sold to customers covers TCU’s other costs of delivering service, such as capital costs and Operations and Maintenance (O&M) costs.⁵¹ TCU provided the following historical financial information for fiscal years 2015 to 2021 set out in Table 2 below.

Table 2: Operating and Net Income Results from 2015-2021⁵²

Toby Creek Utilities Co Ltd.
Gross Margin, Operating Result and Net Income Analysis
FY2015 - FY2021

	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021
Revenue from service delivery to customers	1,430,117	1,491,298	1,842,385	1,721,227	1,786,592	1,697,134	1,673,205
Cost of service delivery by BC Hydro	1,281,444	1,351,574	1,658,365	1,517,510	1,530,555	1,377,908	1,385,340
Gross margin (\$)	148,672	139,724	186,020	203,717	256,037	319,229	287,865
Gross profit (%)	10.4%	9.4%	10.1%	11.8%	14.3%	18.8%	17.2%
Other revenue (PST commission)	2,653.41	1,583.98	2,771.97	2,063.20	1,328.41		
Total revenue	1,432,770	1,492,882	1,845,157	1,723,290	1,787,920	1,697,134	1,673,205
Expenses:							
Amortization			1,428	1,428	2,880	5,840	9,859
Management fees	142,336	144,000	156,000	156,000	168,000	216,017	190,013
Office and miscellaneous	156	1,355	88	391	105	134	139
Professional fees	3,349	2,266	4,211	8,258	32,259	51,182	36,858
Repairs, maintenance and supplies	10,597	11,075	41,166	27,701	13,616	7,054	47,895
	156,438	158,696	202,892	193,777	216,860	280,227	284,664
Operating result (\$)	-5,113	-17,388	-14,100	12,004	40,506	39,001	3,300
Operating result (%)	-0.4%	-1.2%	-0.8%	0.7%	2.3%	2.3%	0.2%
Other income/(expenses): PST recovery			368,895	4,007			
	0	0	368,895	4,007	0	0	0
Income before income taxes (\$)	-5,113	-17,388	354,795	16,011	40,506	39,001	3,300
Income before income taxes (%)	-0.4%	-1.2%	19.3%	0.9%	2.3%	2.3%	0.2%
Income taxes (recovery)		0	64,319	1,018	7,589	-3,359	-5,019
Net income (\$)	-5,113	-17,388	290,476	14,993	32,917	42,360	8,319
Net income (%)	-0.4%	-1.2%	15.8%	0.9%	1.8%	2.5%	0.5%
Retained earnings, beginning of year	163,512	158,399	141,011	431,487	446,480	479,397	521,757
Retained earnings, end of year	158,399	141,011	431,487	446,480	479,397	521,757	530,077

The “Management fees” line item includes regular fees, project management services, and regulatory/legal support services provided by Panorama.⁵³ Pursuant to a Management Services Agreement between Panorama and TCU, Panorama provides electrical services and support for TCU, including maintenance, operation, meter reading, administration and contracting.⁵⁴ The Management Services Agreement sets out regular fees of approximately \$156,000, which covers general maintenance and accounting, as well as management and administration services.⁵⁵ TCU explains that management fees in 2019 and 2020 exceeded the regular fees due to additional services provided by Panorama related to sourcing the scheduled replacement transformer ordered in Fall 2020, regulatory matters, including the preparation of this Application, and dealing with a water

⁴⁹ Exhibit B-5, BCUC IR 9.3.

⁵⁰ Exhibit B-5, BCUC IR 9.3.

⁵¹ Exhibit B-5, BCUC IR 9.3.

⁵² Exhibit B-5, BCUC IR 10.2.

⁵³ Exhibit B-7, BCUC IR 6.2 and 6.3.

⁵⁴ Exhibit B-1, p. 15.

⁵⁵ Exhibit B-1, Appendix D, Schedule B.

damage claim.⁵⁶ 2021 management fees also exceed regular fees by \$34,000 largely due to regulatory and legal support services.⁵⁷ TCU has no salaried management, employees or payroll.⁵⁸ TCU explains that past profits have been left in TCU as retained earnings. While not formalized, TCU explains that its retained earnings comprises its capital replacement reserve fund as it has been applied towards the purchase of capital assets (e.g. transformer replacements).⁵⁹ TCU has had a growing retained earnings balance and as of October 31 2021, its retained earnings was \$530,076.⁶⁰ TCU currently generates sufficient cash flow to pay for one replacement transformer each year while meeting all other costs such as O&M.⁶¹ TCU also confirmed that it has access to capital funding from its retained earnings and potentially through financing if necessary.⁶²

TCU submits that its proposed rates, which are the same as BC Hydro's rates for the same service, are fair to TCU's customers in terms of historical continuity and as an appropriate point of comparison, the closest alternative to TCU service being BC Hydro service.⁶³ TCU acknowledges that BCUC's standard practice is to hold revenue requirements hearings for regulated utilities to set rates.⁶⁴ However, TCU considers the regulatory expenses associated with a detailed revenue requirements review, unique tariff, and periodic rate schedule amendments would impose significant costs on TCU's limited customer base.⁶⁵ TCU submits that its proposed Electric Tariff is consistent with the practice of a number of small utilities in BC that adopt rates which are the same as or similar to those of larger utilities operating in the vicinity, or from which such small utilities obtain their power.⁶⁶

2.5 Fair Return

TCU's proposed Electric Tariff rates do not expressly include a rate of return to compensate TCU's shareholder for its opportunity cost of investing in TCU nor did TCU expressly seek approval of a specific return on equity in its Application.⁶⁷ TCU states that the rates it charges to customers are set to be the same as what customers would be paying BC Hydro if they were directly connected to BC Hydro's network.⁶⁸ TCU states that it has earned a return from its customers,⁶⁹ which is evidenced in its average net income percentage of 1.4 percent from 2018 to 2021.⁷⁰ TCU explains that its past profits have been left in TCU and there have been no distributions of profits/dividends or returns of capital to TCU's shareholder.⁷¹

While various methods of calculating the fair return were explored through IRs in the proceeding, TCU states that its proposed Tariff is just and reasonable in the circumstances.⁷² TCU argues that when compared to

⁵⁶ Exhibit B-1, pp.16–17.

⁵⁷ Exhibit B-7, IR 6.1.

⁵⁸ Exhibit B-1, p. 15.

⁵⁹ Exhibit B-5, BCUC IR 10.1.

⁶⁰ Exhibit B-5 Attachment 8.3.

⁶¹ Exhibit B-5, BCUC 7.2.

⁶² Exhibit B-5, BCUC 7.2.

⁶³ Exhibit B-5, BCUC IR 10.4.

⁶⁴ Exhibit B-5, BCUC IR 12.2.

⁶⁵ Exhibit B-5, BCUC IR 12.2.

⁶⁶ Final Argument, Para 104 (d).

⁶⁷ Final Argument, Para. 86 and 88.

⁶⁸ Exhibit B-5, IR 10.1.

⁶⁹ Exhibit B-5, IR 10.2.1.

⁷⁰ Exhibit B-5, IR 10.2.

⁷¹ Exhibit B-5, IR 10.2.

⁷² Exhibit B-5, 10.4.

alternative rate structures which would lead to increased costs for TCU's relatively small number of customers, its proposal minimizes regulatory and accounting complexity.⁷³ TCU states that its proposed rates, which are the same as BC Hydro's rates for the same service, are fair to customers in terms of historical continuity, and as an appropriate point of comparison, the closest alternative to TCU service is BC Hydro.⁷⁴ TCU acknowledges, in the future, it may distribute profits to its shareholder as either dividends or return of capital, but after ensuring that capital replacement funds are adequate.⁷⁵ TCU also states that a return of 25 percent of gross profits per year in three to five years would be a medium-term goal⁷⁶ and would not require varying the rates sought by TCU in this Application.⁷⁷

2.6 Overall Panel Determination on Rates

The Panel makes three determinations pertaining to TCU's application pursuant to sections 58, 59, 60 and 61 of the UCA.

Rates

The Panel approves the proposed TCU Electric Tariff that incorporates by reference BC Hydro's rate schedules which have previously been approved by the BCUC. Specifically, these are the BC Hydro General Service RS 1301, 1501 and 1601 that are charged to TCU customers. This approval is contingent upon TCU matching applicable terms and conditions in the BC Hydro Tariff, including rate riders (i.e. Deferral Account Rate Rider Schedule 1901) and interim rate increases. BC Hydro rates and terms of service are reviewed through a rigorous regulatory process incorporating full consideration of fairness and non-discrimination issues.

TCU is a small, geographically constrained utility with 77 customer connections and purchases its entire electricity supply from BC Hydro. The Panel finds that the TCU Application is consistent with the practice of a number of small utilities in BC that adopt rates which are the same as or similar to those of BC Hydro and FortisBC Energy Inc. Those utilities, including Silversmith, Corix (Sonoma Pines) and Corix (Sun Rivers) have rates equivalent or similar to those of BC Hydro. All but one of those small utilities obtain their entire power supply from BC Hydro. The TCU proposal leads to reasonable rates from a customer perspective, as TCU customers would receive their electricity at similar rates as neighbouring BC Hydro customers in the same rate class.

The Panel approves a flow-through rate adjustment mechanism that enables reference to current and future BC Hydro schedules, as aligned with the equivalent TCU customers, without a new application to the BCUC. The TCU Electrical Tariff references the BC Hydro Tariff such that future changes to the applicable BC Hydro rate schedules will flow-through to TCU customers in accordance with the applicable BC Hydro Revenue Requirements Application and BCUC decision, including the effective date, subject to the tariff page filing directive in Section 3.0. Both permanent and interim BC Hydro rate changes will apply to the TCU Electrical Tariff.

⁷³ Exhibit B-5, 10.4.

⁷⁴ Exhibit B-5, IR 10.4.

⁷⁵ Final Argument, Para. 86.

⁷⁶ Exhibit B-7, IR 9.1.1.

⁷⁷ Final Argument, Para. 94.

Revenues, Costs and Returns

TCU rates have aligned with equivalent BC Hydro rate schedules in the past and TCU is proposing a similar approach in the future, maintaining an appropriate source of revenues for TCU. **The Panel finds that the rates will provide for an opportunity for TCU to earn a fair return because they provide sufficient revenue to support the operating costs and planned capital expenditures, and to accumulate retained earnings.**

The Panel acknowledges examples of TCU costs and revenues over a seven-year period (Table 2) to illustrate that the total margin between revenues from sales and cost of sales both covers TCU's other costs of delivering service and provides for a modest net margin on average. Sales have exceeded costs in the past five years and the net incomes were \$14,993, \$32,917 and \$42,360, respectively in 2018, 2019 and 2020. The accumulated retained earnings balance was \$530,076 as of October 31, 2021.

Regarding operating costs, TCU states that it has no salaried management, employees or payroll and has a Management Services Agreement with Panorama. In recent years (2019–2021) the management fees have exceeded the regular fees of approximately \$156,000 to cover additional expenses, such as regulatory and legal support services. The Panel is satisfied that the amounts paid by TCU to Panorama that exceeded the regular fees in the Management Service Agreement are reasonable.

TCU states that sustainment capital includes the targeted replacement of one transformer per year with estimated costs of between \$35,000 (in 2022) and \$90,000 (in 2026) per 300 kVa unit. TCU confirms that it would not compromise the safety and reliability of service as Panorama is TCU's owner and largest customer. Panorama's resort operations include ski lifts, snow-making equipment, and resort amenities and would be directly impacted by safety or reliability issues, which could adversely affect Panorama's reputation, as well as TCU's. TCU submits that in the past five years, TCU has experienced three unplanned outages and eight system interruptions due to planned maintenance, such as pole replacement, transformer oil sampling and transformer replacement. The Panel is satisfied that the level of capital spending historically is commensurate with reliable service.

There is no evidence before the Panel that ratepayers oppose the proposed rate design or resulting rates. Further, it is clear that the shareholder of TCU is satisfied that the proposed rate design will provide them with the opportunity to earn a fair return as required by section 59 of the UCA.

2.7 Future TCU Filings with the BCUC

TCU also requests directions with regard to future proceedings, filings or reports required by the BCUC.⁷⁸

TCU states that it is a small public utility with limited resources and has a limited number of customers among whom to share the burden of regulatory costs. Therefore, TCU submits that the complexity and frequency of its regulatory filings should be at the lower end of the scale.⁷⁹

Panel Determination

The Panel acknowledges that TCU is a small utility with limited resources. Therefore, the Panel considers it appropriate to maintain the same requirements for TCU as it has done for other similar small utilities regulated by the BCUC.

⁷⁸ Exhibit B-1, p. 2.

⁷⁹ Final Argument, Para. 83.

The Panel has determined that TCU's rate proposal will provide for an opportunity to earn a fair return by the TCU shareholder, and we have approved its applied for Electric Tariff, which is based on BC Hydro's equivalent rate schedules. We also approved a mechanism to reflect changes to be made to TCU's rates when BC Hydro's rate schedules are amended. Accordingly, we expect TCU to submit an appropriate application for BCUC review and approval if and when TCU seeks to update the way its tariff is calculated or requests amendments to any approvals or determinations set out in this decision.

In regard to future reports required by the BCUC, the **Panel directs TCU to file Annual Reports and financial statements which summarize the results for the electric utility operations within 60 days of TCU's financial year-end, in a form to be developed in consultation with BCUC staff.**

3.0 Issue Arising - Filing of Tariff pages

TCU's proposed Electric Tariff incorporates BC Hydro rate schedules by reference rather than by attaching copies or versions of BC Hydro's current RS 1301, 1501 and 1601.⁸⁰ TCU states that BC Hydro's Tariff is readily available to customers and other members of the public for review as it is the largest electrical utility in the province.⁸¹ TCU states that rather than make filings with the BCUC each time a relevant BC Hydro rate schedule is amended, it proposes that such amendments will automatically flow-through to TCU and its customers, taking effect on the same date, as referenced in Section 11 of TCU's proposed Electric Tariff.⁸² TCU states that the proposed approach is sought to minimize regulatory expenses associated with filings.⁸³

TCU submits that section 11 of its proposed Electric Tariff complies with the requirements of section 61 of the UCA. TCU states that Section 61(1) gives BCUC the discretion to determine the rules, time and form required of rate schedule filings, including the discretion to approve TCU's proposal to incorporate by reference rate schedules of BC Hydro.⁸⁴ TCU explains that incorporation by reference, in the law of contract, permits the terms of an extrinsic document to be made part of a contract by express reference to the document. The effect of incorporation by reference is that the document incorporated is considered to be part of the text of the contract.⁸⁵

TCU references author of G.H. Treitel, *The Law of Contract*, 9th edition (London: Sweet & Maxell, 1995) at [page] 175 who states, where there are several editions of the incorporated document, the contract is taken to refer to the most recent edition and may incorporate subsequent amendments to the incorporated document.⁸⁶ G.H. Treitel states:

The terms of a contract may be contained in more than one document. One of these may expressly refer to another, e.g., where a contract is made subject to standard terms settled by a trade association. Those terms are then incorporated by reference into the contract; if there are several editions of the standard terms, the contract is prima facie taken to refer to the most recent edition. It may also incorporate amendments validly made by the association.⁸⁷ [*Emphasis added*]

⁸⁰ Exhibit B-5, BCUC IR 11.3.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Exhibit B-5, BCUC IR 13.3

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

TCU submits that since its proposed Electric Tariff incorporates BC Hydro rate schedules by reference, including future amended rate schedules, BC Hydro's filing of amended rate schedules would automatically be incorporated into TCU's Electric Tariff and be deemed to be a filing of a TCU rate schedule.⁸⁸ If approved by the BCUC, this approach would comply with section 61 of the UCA.⁸⁹ TCU also confirms that a proposed automatic adjustment mechanism would also apply to TCU when BC Hydro has an approved interim rate change.⁹⁰

Panel Determination

The Panel agrees that TCU's proposal meets the requirements of Section 61(1), (2), (3) and (4) of the UCA; however, it is unclear how this proposal would meet the requirements of Section 61(5) and (6) as the purpose of these subsections are to be a check and balance on public utilities' rates and allow for a dispute resolution process. Approval of TCU's proposal would have to be subject to review by the BCUC in the event there is a complaint by an affected party within 60 days of the effective date of the new schedule of rates.

In previous BCUC decisions⁹¹ for other small utilities mentioned in Section 1.3, the BCUC imposed the following terms on rate schedules to be filed with the BCUC:

- A time limit on filing amended tariff pages;
- Amendments have to match those of approved public utility rate schedules;
- Subject to review by the BCUC to review accuracy of the changes; and
- Subject to review by the BCUC in the event of a complaint by an affected party within 60 days of the effective date of amended rates.

The Panel does not see a reason to deviate from this approach and therefore **directs TCU to file amended tariff pages which reflect changes made by BC Hydro to RS 1301, 1501 and 1601 within 10 business days of the effective date of the BC Hydro rate changes for review and approval by the BCUC to verify the accuracy of the changes. If TCU does not file the amended tariff pages within 10 business days of the effective date of the BC Hydro rate change, the TCU rate changes will not become effective until such time as otherwise approved by the BCUC.**

Original signed by:

D.M. Morton
Panel Chair/Commissioner

Original signed by:

A. C. Dennier
Commissioner

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Exhibit B-7, BCUC IR 11.1.

⁹¹ BCUC Orders [G-144-15](#), [G-159-13](#), [C-13-05](#), and [G-68-05](#).

Original signed by:

A. Pape-Salmon
Commissioner