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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-141-12**

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

and

the Insurance Corporation Act, R.S.B.C. 1996, Chapter 228, as amended

and

Insurance Corporation of British Columbia
Application to Delay in Using Immediate Roadside Prohibitions
in the Driver Risk Premium Program

BEFORE: L.F. Kelsey, Commissioner
N.E. MacMurchy, Commissioner October 4, 2012
B.A. Magnan, Commissioner
D.M. Morton, Commissioner

O R D E R

WHEREAS:

- A. By Order G-126-07, the British Columbia Utilities Commission (Commission) approved the Driver Risk Premium (DRP) program included as part of the Insurance Corporation of British Columbia (ICBC) 2007 Rate Design Application. The DRP program is carried out under Schedule E of the Basic Insurance Tariff (Tariff);
- B. On April 27, 2010, the Provincial Government introduced changes to the impaired driving provisions in the *Motor Vehicle Act* which came into effect on September 20, 2010 (the IRP legislation). The amendments provide for an automatic 90-day driving suspension when a driver registers a "fail" reading (blood-alcohol content over 0.08) on a roadside screening device or where a driver refuses to comply with a demand to provide a sample of breath for analysis (refusal). The IRP legislation also includes shorter suspension periods of 3, 7, or 30 days if a driver registers a "warn" reading (blood-alcohol content between 0.05 and 0.08);
- C. On June 14, 2012, ICBC submitted an application to the Commission for approval seeking delay in using impaired driving provisions (IRP) in the DRP program (Application). ICBC sought Commission approval on the following:
 - (i) ICBC not be required to recalculate DRP assessments that were impacted by the system delays related to the replacement of the Office of the Superintendent of Motor Vehicle's Core Operating System (System Delays), which would include "warn", "refusal", and "fail" IRPs;
 - (ii) ICBC to set aside all "fail" IRPs issued before June 15, 2012 and not include them in DRP assessments, pending BC Supreme Court (the Court) decision concerning the legal effect of the declaration of invalidity of the "fail" IRPs;

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- D. By letter dated June 28, 2012, the Commission invited comments from interveners in past proceedings on the Application relating to the two matters sought in the Application affecting the DRP program. The Commission received no letters of comment on the Application;
- E. On July 12, 2012, the Court issued its judgement on the effect of the declaration of invalidity of the IRPs for “fail” readings. The decision is that the law with respect to the IRP legislation will be seen to have been valid at the time it was used;
- F. On August 17, 2012, after review of the judgment dated July 12, 2012, ICBC submitted an amendment to the Application (Amended Application) seeking Commission approval that the “fail” IRPs be included for the purposes of DRP assessments as of October 31, 2012 on a go forward basis. ICBC submits that using the “fail” IRPs in the DRP program is consistent with the Court’s decision. For “fail” IRPs issued on or after June 15, 2012, ICBC intends to use these for the purpose of the DRP program as they were not considered to be invalid by the Courts and assessments for these fails would begin to go out to customers in mid-November, as per normal three-year scan periods;
- G. On September 19, 2012, further to the Amended Application, ICBC submitted a revision to its proposed Tariff page to clarify specific sections of the *Motor Vehicle Act* that ICBC sought to exclude from the recalculation relating to the “fail” IRPs;
- H. The Commission has reviewed the Application and the Amended Application and considers that their requested approvals are warranted.

NOW THEREFORE the Commission orders as follows:

1. ICBC is not required to recalculate DRP assessments prior to February 29, 2012 that were impacted by the System Delays, which include “warn”, “refusal”, and “fail” IRPs.
2. ICBC is directed to include “fail” IRPs for the purposes of DRP assessments as of October 31, 2012 on a go forward basis. ICBC is not required to recalculate previous DRP assessments relating to “fail” IRPs prior to October 31, 2012.
3. In accordance with the terms of this Order, the amendments to Schedule E, Page 5 of the Basic Insurance Tariff are accepted effective on the date of this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of October 2012.

BY ORDER

Original signed by:

D.M. Morton
Commissioner