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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-79-12**

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

and

**An Application by Strata Plan VR1104
for an Exemption from Regulation as a Public Utility**

BEFORE: D.M. Morton, Commissioner June 14, 2012

O R D E R

WHEREAS:

- A. On September 7, 2010, Strata Plan VR1104 applied to the British Columbia Utilities Commission (Commission) for an Order exempting it from regulation as a public utility under subsection 88(3) of the *Utilities Commission Act (UCA)* (Application);
- B. Strata Plan VR1104 owns a building located at 1127 Barclay Street, Vancouver, British Columbia (Premises);
- C. Strata Plan VR1104, as landlord and lessor, has granted TM Mobile Inc. and Telus Communications Company (Telus) a lease for a portion of the Premises (Site);
- D. As tenant and lessee of the Site, Telus uses the rooftop of the Premises for a cellular relay station. Telus installed equipment, devices and facilities for the purpose of carrying on its business as a telecommunications service provider;
- E. Strata Plan VR1104 and Telus have a confidential site lease agreement for a period of more than five years;
- F. Strata Plan VR1104 is responsible for invoicing Telus for the electricity usage based on the measured consumption from a sub-meter;
- G. The *UCA* defines a "public utility", in part, as "a person, or the person's lessee...who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity...to or for the public or a corporation for compensation." The definition excludes "a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others";
- H. A "tenant" for the purposes of the *UCA* "does not include a lessee for a term of more than 5 years";

- I. Since Telus is a tenant with a lease greater than 5 years, Strata Plan VR1104 is a public utility as defined by the *UCA*;
- J. BC Hydro requires Strata Plan VR1104 to enter into an Agreement For Resale Of Metered Electricity;
- K. The *Telecommunications Act* S.C. 1993, c. 38 defines “telecommunications service provider” (TSP) as “a person who provides basic telecommunications services, including by exempt transmission apparatus.” Telus qualifies as a TSP;
- L. Potentially other landlords in similar factual situations to Strata Plan VR1104 are reselling electricity to TSPs who are also tenants of the respective landlords;
- M. Subsection 88(1) of the *UCA* allows the Commission to make an order, rule or regulation apply to all cases, or to a particular case or class of cases, or to a particular person;
- N. For the purposes of this Order, the Commission considers the class of cases to be that where a person resells electricity to a tenant who is a TSP, including a tenant who is a lessee for a term of more than 5 years and where the lease is for the purpose of allowing the tenant to operate and maintain the telecommunications equipment, devices and facilities of the tenant on the premises of the person;
- O. Subsection 88(3) of the *UCA* provides that the Commission may, with the advance approval of the Lieutenant Governor in Council (LGIC) and on conditions it considers advisable, exempt a person, equipment or facilities from the application of all or any of the provisions of the *UCA*, or may limit or vary the application of the *UCA*;
- P. In Order in Council No. 368, dated May 31, 2012, attached as Appendix 1 to this Order, the LGIC grants advance approval to the Commission to exempt, from Part 3 of the *UCA*, the class of cases where a person, not otherwise a public utility, purchases electricity from a public utility and resells the electricity to a tenant, including a tenant who is a lessee for a term of more than 5 years, who is
 - (1) a telecommunication service provider, and
 - (2) leasing the person’s premises so that the tenant can operate and maintain telecommunications equipment, devices and facilities for the purpose of carrying on business as a telecommunications service provider;
- Q. The Commission has considered the Application and has determined that exempting a person who resells electricity to a tenant who is a TSP, including a tenant who is a lessee for a term of more than 5 years and where the lease is for the purpose of allowing the tenant to operate and maintain the telecommunications equipment, devices and facilities of the tenant on the premises of the person, for the purpose of carrying on business as a telecommunications service provider, from certain provisions of the *UCA* is in the public interest.

NOW THEREFORE pursuant to subsections 88(1) and 88(3) of the *Utilities Commission Act*, the Commission orders as follows:

1. Subject to Directives 2 through 4 of this Order, a person, not otherwise a public utility, who purchases electricity from a public utility and resells electricity:
 - i. to a tenant who is a telecommunications service provider including a tenant who is a lessee for a term of more than 5 years; and
 - ii. where the lease is for the purpose of allowing the tenant to operate and maintain its telecommunications equipment, devices and facilities on the premises of the person, for the purpose of carrying on business as a telecommunications service provider,is exempt from Part 3 of the *Utilities Commission Act*.
2. The exemption of a person referred to in Directive 1 of this Order remains in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person for which sufficient notice has been given to the persons the Commission believes may be affected, orders that the exemption no longer applies to the person referred to in Directive 1 of this Order.
3. The exemption of a person referred to in Directive 1 of this Order only applies to that person if:
 - i. The telecommunications service provider falls within the definition of telecommunications service provider in the *Telecommunications Act* S.C. 1993, c. 38 or as that definition may be amended from time to time; and
 - ii. The person files
 - (a) a fully executed agreement for resale of metered electricity between the person and the local electric utility, and
 - (b) information that allows the Commission to determine that this Order applies to the person,with the Commission within 45 days of execution of the agreement for resale of metered electricity; and
 - iii. The Commission accepts the filing of the items referred to in Directive 3(ii) of this Order after determining this Order applies to the person;

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- iv. The person charges an amount for the supply of electricity that is no greater than its actual costs incurred for the consumption of electricity by the telecommunications equipment, devices and facilities of the telecommunications service provider; and
 - v. The person operates and maintains in a safe and proper manner, consistent with the requirements of the applicable regulatory authorities, any equipment, devices and facilities owned by the person necessary to supply electricity to the telecommunications equipment, devices and facilities on the premises of the person that are owned by the telecommunications service provider.
4. A person to whom the exemption referred to in Directive 1 of this Order applies must advise the Commission, in writing, of:
- (1) the termination of the lease with the telecommunications service provider, or
 - (2) the termination of the agreement for resale of metered electricity with the local electric utility, whichever occurs first, within 45 days of termination.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of June 2012.

BY ORDER

Original signed by:

D.M. Morton
Commissioner

Attachment

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

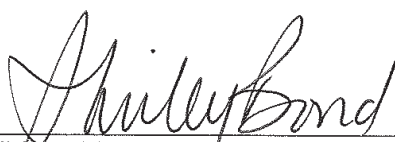
Order in Council No. 368, Approved and Ordered MAY 31 2012

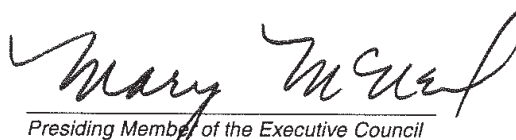

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that approval is given to the British Columbia Utilities Commission to exempt from Part 3 of the *Utilities Commission Act*, for the purposes of and subject to the terms substantially set out in the attached draft order of the British Columbia Utilities Commission, the class of cases where a person, not otherwise a public utility, purchases electricity from a public utility and resells the electricity to a tenant, including a tenant who is a lessee for a term of more than 5 years, who is

- (a) a telecommunication service provider, and
- (b) leasing the person's premises so that the tenant can operate and maintain telecommunications equipment, devices and facilities for the purpose of carrying on business as a telecommunications service provider.


Minister of Justice and Attorney General


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 88 (3)

Other:

March 22, 2012