



**ORDER NUMBER**  
**G-116-24**

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

and

APT Utility Corp  
Status as a Public Utility

**BEFORE:**

B. A. Magnan, Panel Chair  
E. B. Lockhart, Commissioner

on April 18, 2024

**ORDER**

**WHEREAS:**

- A. On September 9, 2021, a complaint was filed with the British Columbia Utilities Commission (BCUC) concerning, amongst other things, electricity charges by APT Utility Corp. (APT) at Holly Lodge in Vancouver;
- B. On January 21, 2022 by Order G-16-22, the BCUC suspended review of the complaint pending the outcome of a proceeding to determine if APT is a public utility;
- C. On August 16, 2022 by Order G-228-22, the BCUC established a regulatory timetable to conduct the review of APT's status as a public utility (Proceeding). The regulatory timetable included, among other things, public notice, BCUC information requests, and an opportunity for letters of comment;
- D. On September 22, 2022, the Residential Tenancy Branch (RTB) filed a letter of comment with the BCUC noting an ongoing RTB investigation into Holly Lodge (RTB Investigation);
- E. On February 7, 2023, APT filed a final submission in the proceeding;
- F. On April 4, 2023 by Order G-76-23, the BCUC adjourned the proceeding until the earlier of (i) a final determination by the RTB regarding APT's status as a landlord, and (ii) April 1, 2024;
- G. On January 25, 2024 by Order G-24-24, the proceeding resumed following an update from APT on the outcome of the RTB Investigation; and
- H. The BCUC has reviewed the evidence and submissions in the proceeding and makes the following determinations.

**NOW THEREFORE** for the reasons outlined in the decision accompanying this order, the BCUC orders as follows:

1. APT is a public utility as defined in section 1 of the *Utilities Commission Act* (UCA).
2. APT is directed to file with the BCUC a plan for obtaining all required regulatory approvals for its rates (electricity, natural gas) for service provided under the UCA, and operating system within 60 days of this order.
3. APT is directed to file with the BCUC interim tariff pages reflecting rates for service provided under the UCA that are currently being charged to customers for BCUC endorsement within 30 days of this order.
4. Pursuant to section 90 of the UCA, the current rates for service provided under the UCA that APT charges to its customers are made interim as of the date of this order and any differences between the interim and permanent rates, once approved by the BCUC, will be refundable or recoverable with interest calculated at the average prime rate of APT's principal bank for its most recent fiscal year.
5. APT is directed to provide a copy of this order to all customers of APT as a bill insert in the next billing cycle or within 30 days, whichever is sooner.
6. APT is directed to publish a copy of this order on the homepage of its website within 60 days of this order and the order is to remain on APT's website for a minimum of 60 days from the date it is first published.
7. APT is directed to file an Annual Report with the BCUC within 4 months of its fiscal year end, in accordance with BCUC letter L-46-23.

**DATED** at the City of Vancouver, in the Province of British Columbia, this                      18<sup>th</sup>                      day of April 2024.

BY ORDER

*Original signed by:*

B. A. Magnan  
Commissioner

## DECISION

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### 1.0 Introduction

On September 9, 2021, a complaint was filed with the British Columbia Utilities Commission (BCUC) concerning electricity charges by APT Utility Corp. (APT) and whether the BCUC has approved APT to resell electricity at Holly Lodge, a multi-residential building located at 1210 Jervis Street in Vancouver, BC (Complaint). On August 16, 2022, the BCUC launched an investigation into APT's status as a public utility.

### 1.1 Background

Holly Lodge is more than a century old and was built sometime after 1910. It has 83 rental apartment units and no commercial space. Pacific Investment Corporation Limited (PIC) owns Holly Lodge, as well as several other residential rental buildings in Vancouver. PIC leases most of the apartments in Holly Lodge on a unit-by-unit basis to Vancouver Apartment Rentals Ltd. (VAR), a BC corporation that is wholly owned by PIC, which in turn subleases the apartments to residents. Some longstanding tenants lease directly from PIC. There are no leases or subleases at Holly Lodge for a term of more than five years.<sup>1</sup>

Holly Lodge receives electricity service from the British Columbia Hydro and Power Authority (BC Hydro). BC Hydro has revenue meters for each of the building's residential units, common areas (the hallways and mailroom), and basement, with a BC Hydro account assigned to each.<sup>2</sup> The BC Hydro accounts for residential units and common areas are charged for electricity usage under the residential service rate RS 1101, while the BC Hydro account for the basement of the building is charged under the small general service rate RS 1300.<sup>3</sup> BC Hydro reads the meters and issues bills on each meter reading.<sup>4</sup>

Fortis BC Energy Inc. (FEI) provides gas service to Holly Lodge through one FEI revenue meter. The building is fitted with two gas-fired furnaces<sup>5</sup> to provide heat and hot water to units and throughout the building, including common areas. The natural gas supplied to Holly Lodge is also used for any gas stoves in the residential units.<sup>6</sup> APT reports that, in the winter, heating is controlled centrally (i.e., there are no thermostats in individual apartments) and delivered to each unit.<sup>7</sup> In the summer, heating in the building is shut down and most gas consumption is for hot water.<sup>8</sup>

APT is a BC corporation that was established in March 2021, and is wholly owned by PIC.<sup>9</sup> Holly Lodge residents enroll with APT for the provision of space heating, water heating, electricity, water/sewerage, and refuse/recycling collection services.<sup>10</sup> Residents enrolled with APT (APT Enrollees) receive an APT monthly utility

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<sup>1</sup> Exhibit A2-1, pp. 2–3.

<sup>2</sup> Ibid., p. 3–4.

<sup>3</sup> Exhibit B-3, IR 2.4.1; Exhibit B-6, IR 4.2.

<sup>4</sup> Exhibit B-3, IR 2.5.

<sup>5</sup> The gas furnaces were installed in 1953, only one furnace is operated. Exhibit B-3, p. 2.

<sup>6</sup> Exhibit A2-1, p. 4.

<sup>7</sup> Exhibit B-3, IR 2.8.

<sup>8</sup> Exhibit B-10, IR 9.5.

<sup>9</sup> Exhibit A2-1, p. 2.

<sup>10</sup> Ibid., p. 6.

bill that includes charges for electricity and natural gas.<sup>11</sup> APT reports that these tenants pay a lower occupational rent than those tenants who are not enrolled with APT for utility services.<sup>12</sup>

APT refers to PIC, VAR, and APT collectively as the landlord group or Holly Lodge group (Holly Lodge Group herein). APT indicates that PIC established VAR to separate the capital costs of maintaining the building from the costs of renting the suites, and that the arrangement with APT was intended to provide transparency that “rent is only a payment to possess the rental unit and does not cover or include any services.”<sup>13</sup>

APT states that, as of January 2023, 20 of the 83 units at Holly Lodge contracted with APT for utility services.<sup>14</sup>

### *Utility Billing at Holly Lodge*

With respect to electricity costs, APT reports that PIC is named on the BC Hydro accounts for the electricity meters in the building’s common areas, the basement, and each of the individual units enrolled with APT for utility service. For all other residential units, the name of the individual resident is on the BC Hydro account, and the resident deals with BC Hydro directly.<sup>15</sup> APT explains that it pays the BC Hydro bill for a unit occupied by an APT Enrollee and applies that amount, less the GST, to the APT bill as “Electricity Utility” for payment (to APT) by the APT Enrollee in the following month.<sup>16</sup> For example, the September bill that APT issues would incorporate the August BC Hydro bill for electricity used during the June 30 – July 29 period.<sup>17</sup>

For natural gas costs, APT indicates that PIC receives a single bill from FEI for the total natural gas consumed in the building. These costs are then allocated to APT Enrollees based on a 12-month rolling average of FEI’s bills and the square footage of the unit. PIC is responsible for the gas consumption for units that are not enrolled with APT.<sup>18</sup>

In addition to the electricity and natural gas costs described above, APT also charges APT Enrollees gas and electricity delivery charges (Delivery Charges) and an administration fee. APT states that it calculates the Delivery Charges from the sum of three-month rolling averages of maintenance costs (electrical system or gas system), property taxes (at 30% of building total), and insurance (at 50% of building total). A three-month total sum is then apportioned by a unit’s percentage of total square footage in the building and then divided by three to arrive at a monthly charge. The administration fee is a fixed percentage (5 percent) of the total APT bill before GST is applied.<sup>19</sup>

Charges billed to one APT Enrollee for October 2022 are shown in Appendix A, Figure 1 – Sample APT Bill for Utility Services from October 2022, as attached to this decision. In addition to electricity and natural gas services, the APT bill includes charges for water and sewer, refuse and recycling, and GST.

APT explains that each tenant signs a Residential Tenancy Agreement (Tenancy Agreement) through which VAR or PIC provides the tenant an apartment. The Tenancy Agreement states that electricity, heat, water, sewage and waste disposal are not included in the rent.<sup>20</sup> APT Enrollees then enter into a utility services contract with

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<sup>11</sup> Exhibit B-3, IR 1.4.

<sup>12</sup> Ibid., IR 2.9.

<sup>13</sup> Exhibit B-3, IR 1.3; Exhibit B-10, IR 8.4.

<sup>14</sup> Exhibit B-10, Appendix A.

<sup>15</sup> Exhibit A2-1, p. 4.

<sup>16</sup> Exhibit B-3, IRs 1.8.1, 2.5.

<sup>17</sup> Ibid., IR 2.5.

<sup>18</sup> Ibid., IRs 1.9, 2.7, 2.8, 2.9.

<sup>19</sup> Exhibit B-10, Appendix C, Appendix D.

<sup>20</sup> Exhibit B-3, IR 1.4.

APT pursuant to which APT charges Holly Lodge tenants for the cost of providing these services.<sup>21</sup> The language in these two agreements is discussed below.

### *Tenancy Agreement and the Utility Services Contract*

The Tenancy Agreement in place for Holly Lodge at the time of the Complaint states, in section 20, that space heating and electricity services are provided to the sub-tenant<sup>22</sup> exclusively through APT, a company contracted to do so by the landlord.<sup>23</sup> A tenant or resident occupant of a unit at Holly Lodge, including each APT Enrollee, is a sub-tenant in the Tenancy Agreement.<sup>24</sup> APT Enrollees complete the APT Individual Utility Billing Enrollment Form, which, once signed by both parties, becomes the utility services contract between the tenant and APT (Utility Services Contract). The Utility Services Contract also refers to the tenant or resident occupant as the sub-tenant and includes, among other things, the following provisions:

A In consideration of the Sub-Tenant's pledge to pay in full and in a timely manner all amounts duly billed and owing to APT for its services, APT agrees to provide the Utility Services to the Sub-Tenant in the Building and Unit, on the terms and conditions of this Contract...

C The Sub-Tenant hereby contracts with APT for the provision of the Utility Services (including all cost of maintaining the infrastructure used to deliver the services as per APT's contract for maintenance with the building owner)...

D The Sub-Tenant acknowledges that Utility Services are provided to the Sub-Tenant in the Building and Unit exclusively through APT...

N The Sub-Tenant acknowledges that all equipment within the Building relating to the provision of Utility Services will continue to be owned by the building owner and no element of this agreement will affect that.<sup>25</sup>

The Utility Services Contract also addresses the potential for disconnection of services, providing that the "Sub-Tenant acknowledges its responsibility for paying the monthly utility bill, and that failure to do so will result in disconnection of services."<sup>26</sup>

## **1.2 Regulatory Process**

By Order G-228-22, the BCUC established a public hearing process to review APT's status as a public utility (Proceeding). The regulatory timetable included, among other things, public notice, BCUC information requests, a letter of comment period, and further process as outlined below.<sup>27</sup> The BCUC received letters of comment from:

- six residents of Holly Lodge;
- the Residential Consumer Intervener Association (RCIA);

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<sup>21</sup> Ibid., IR 1.11.

<sup>22</sup> This version of the Tenancy Agreement (Exhibit B-3, Appendix B) uses the term "sub-tenant." APT explains that the term "sub-tenant" was to reflect VAR's role in the sub-leasing of units to residents; Exhibit B-3, IR 1.3.

<sup>23</sup> Exhibit B-3, Appendix B, p. 3.

<sup>24</sup> Several versions of section 20 of the Tenancy Agreement have been filed in this proceeding with variations to the language. Exhibit B-3 Appendix B, p. 3; Exhibit B-10. IR 8.4, Appendix B.

<sup>25</sup> Exhibit B-3, Appendix A, p. 2.

<sup>26</sup> Ibid., Appendix A, p. 1.

<sup>27</sup> In letters of comments, BCOAPO and RCIA included submissions on the regulatory process to be undertaken for the Proceeding and offered opinion that an additional BCUC proceeding is needed to generically address submetering in BC. See Exhibit E-6 and Exhibit E-9.

- the BC Old Age Pensioners' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, the Tenant Resource and Advisory Centre, and Together Against Poverty Society (BCOAPO); and
- the Residential Tenancy Branch (RTB).<sup>28</sup>

By letter dated February 7, 2023, APT filed a final submission. By Order G-76-23, the BCUC adjourned the Proceeding until the earlier of (i) a final determination by the RTB regarding APT's status as a landlord, or (ii) April 1, 2024. By letter dated January 10, 2024, the BCUC requested an update from APT on the outcome of the RTB investigation.<sup>29</sup> APT filed a letter in response on January 23, 2024, attaching a copy of the RTB Compliance and Enforcement Unit investigator's letter, dated September 22, 2023 (Investigation Outcome Letter).<sup>30</sup>

By Order G-24-24, the BCUC resumed the Proceeding with a regulatory timetable that included letters of comment on the Investigation Outcome Letter and an opportunity for APT to reply to any such submissions. BCOAPO submitted an additional letter of comment. APT did not submit a reply.

### *Residential Tenancy Branch Investigation*

In APT's response, dated November 3, 2021, to the BCUC's initial questions arising from the Complaint, APT informed the BCUC that the RTB had initiated an investigation in respect of landlord-tenant issues at Holly Lodge.<sup>31</sup> The RTB issued a Notice of Investigation to PIC that raised issues with, among other things, PIC's decision to cease providing certain services that it previously provided directly to tenants, including electricity, heat, water, sewer and garbage.<sup>32</sup>

The Investigation Outcome Letter, filed January 23, 2024,<sup>33</sup> states that: (i) "there does not appear to be a meaningful separation of duties between PIC, VAR and APT, and Mr. Wolverton's actions with respect to the property in question as they appear to only serve his interest as landlord", and (ii) "evidence suggests that APT, owned by PIC, with Brent Wolverton as the sole director, would meet the definition of landlord, if a statutory decision maker were to make a determination in that regard."<sup>34</sup>

Although the Investigation Outcome Letter touched upon the Contract provisions to charge tenants for the cost of maintaining infrastructure used to deliver the services<sup>35</sup> as well as the landlord status of APT in the context of the *Residential Tenancy Act* (RTA)<sup>36</sup>, the RTB did not make any determinations. Further, this Panel cannot consider any evidence gathered by the RTB other than that which is in the evidentiary record of this proceeding.

## **1.3 Legislative and Regulatory Framework**

Section 1 of the *Utilities Commission Act* (UCA) defines public utility, in part, as a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

<sup>28</sup> In the letter dated September 22, 2022, the RTB commented on its ongoing investigation into Holly Lodge, its interpretations of the *Residential Tenancy Act* (RTA) and indicated that no determination had yet been made on whether APT is a "landlord" as defined in the RTA. See Exhibit E-3.

<sup>29</sup> Exhibit A-14.

<sup>30</sup> Exhibit B-11.

<sup>31</sup> Exhibit A2-1, p. 1.

<sup>32</sup> Exhibit A2-2, p. 4.

<sup>33</sup> Exhibit B-11, pp. 1-2, and Attachment, RTB letter dated September 22, 2023.

<sup>34</sup> Ibid., Attachment, RTB letter dated September 22, 2023, p. 2.

<sup>35</sup> Ibid., Attachment, RTB letter dated September 22, 2023, p. 3.

<sup>36</sup> Ibid., Attachment, RTB letter dated September 22, 2023.

(a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation [...]

but does not include [...]

(d) 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 [...]

Section 1 of the UCA defines compensation as:

a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly, and includes a promise or undertaking by a public utility to provide service as consideration for, or as part of, a proposal or contract to dispose of land or any interest in it;

Section 29 of the *Interpretation Act* states:

In an enactment: [...]

"person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

## **2.0 APT's Status as a Public Utility**

### **2.1 Does APT meet the definition of a public utility?**

Part (a) of the public utility definition under the UCA provides that a person who owns or operates equipment or facilities for the transmission, sale, delivery or provision of electricity or gas to or for the public or a corporation for compensation is a public utility. In this section the Panel addresses whether APT fits the definition of public utility. There are some exclusions from the definition, which the Panel addresses in section 2.2 below.

#### *Position of APT*

APT submits that it does not meet the requirements for "public utility" status under the UCA because:

1. The building owner PIC, and not APT, owns the equipment and facilities;
2. APT does not individually operate the equipment and facilities, although it is part of the Holly Lodge Group that does;
3. The service provided is not to the "public"; and
4. There is not the requisite "compensation".<sup>37</sup>

APT states that the building owner, PIC, owns the facilities that deliver the electricity, once received at the building, to the various parts of it.<sup>38</sup> With the exception of meters, the sole ownership of all lines, breakers, switching equipment and transformers in the building is vested in the building owner.<sup>39</sup> Similarly, APT states that PIC owns the natural gas central furnaces at Holly Lodge, providing heat to residential units and heating the

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<sup>37</sup> Exhibit B-10, IR 7.2.

<sup>38</sup> Exhibit B-3, IR 1.1.

<sup>39</sup> Exhibit B-6, IR 4.1.

domestic hot water for the building, as well as the facilities that deliver a small amount of natural gas directly to units for use in gas stoves.<sup>40</sup>

APT explains that its management overlaps with that of other members of the Holly Lodge Group, and that it has no direct employees of its own. In APT's view, "it would be accurate to say that operation of the facilities that generate heat, deliver stove gas within the building, deliver electricity within the building and deliver water within the building is by the Holly Lodge Group."<sup>41</sup>

APT acknowledges that the tenants in Holly Lodge are "members of 'the public', and that, without the application of an exclusion, the relationship would – insofar as it relates to the provision of electricity or gas – be captured within the 'public utility' definition."<sup>42</sup> APT also refers to the BCUC's determinations in Person(s) doing business as Casa Del Mila Oro Geothermal and Casa Del Mila Oro Geothermal<sup>43</sup> and Person(s) doing business as Seascapes Development and Superior Propane<sup>44</sup> that "[t]he five exclusions listed in the definition of 'public utility' help to shed light on the intended scope of the word 'public' and that there is an 'inference that providing a supply or service to others (i.e. persons who are not employees or tenants) is providing to the public.'"<sup>45</sup> APT submits, however, that the public at large does not receive the benefit of the heat, stove gas, or electricity and does not provide any payment to the Holly Lodge Group or any of its members.<sup>46</sup>

Finally, APT submits that in its circumstances "compensation" is not occurring within the meaning of a public utility. In support of this position, APT states that it is not a money-making endeavour and that the sums paid to APT by tenants are intended to cover costs.<sup>47</sup>

According to APT, the Holly Lodge Group receives approximately the same monthly amount (including rent) from each tenant whether or not they have enrolled with APT.<sup>48</sup> Specifically, APT states that "[t]he total amount payable by a tenant was calculated to be the same or very similar with or without APT enrollment, though ultimately the amount payable to APT could increase in relation to costs incurred."<sup>49</sup>

APT describes the electricity and natural gas charges on the APT bill as "a pass through of the amount billed to [PIC]" by BC Hydro and FEI.<sup>50</sup> APT submits that its bills use the rates of public utilities like BC Hydro and FEI, but would not characterize the other charges on its bills as involving rates.<sup>51</sup>

APT considers the Delivery Charges for electricity and gas to reflect reasonable recovery of primary and secondary costs associated with maintaining and operating building equipment to deliver electricity and heat/hot water to tenants, plus a portion of capital costs to replace existing equipment. APT cites electrical transformers and switches, and the furnace, network of exhaust flues, network of steam lines and radiators, water recovery equipment, and water and chemical supplies and control equipment as examples of such equipment.<sup>52</sup>

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<sup>40</sup> Exhibit B-3, IR 1.1.

<sup>41</sup> Exhibit B-3, IR 1.1.

<sup>42</sup> Exhibit A2-1, p. 10, Footnote 2.

<sup>43</sup> Person(s) doing business as Casa Del Mila Oro Geothermal and Casa Del Mila Oro Geothermal, Order G-6-14 and Decision dated January 16, 2014.

<sup>44</sup> Person(s) doing business as Seascapes Development and Superior Propane, Order G-91-14 and Decision dated July 10, 2014.

<sup>45</sup> Exhibit A2-1, p. 10, Footnote 2.

<sup>46</sup> Exhibit B-3, IR 1.1.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Exhibit A2-1, p. 10.

<sup>50</sup> Ibid., p. 7.

<sup>51</sup> Exhibit B-3, IRs 1.4, and 1.4.1.

<sup>52</sup> Exhibit B-6, IRs 4.6 and 5.3.1; Exhibit B-3 2.12.



Finally, with respect to the administration fee, APT submits that proper accounting necessitates some recognition of the cost of maintaining, calculating and reconciling services.<sup>53</sup> APT further submits that at one point it was envisioned that PIC would also pay a small fee to APT, but this has not occurred.<sup>54</sup>

### *Letters of Comment*

BCOAPO submits that electricity, heat, and natural gas are essential services that play a vital role in preserving life, health, and public safety. When these services are provided by public utilities, the UCA applies to balance the interests of utilities and ratepayers while protecting the public interest. When these services are provided by landlords, the RTA applies to balance the interests of the homeowners and renters. BCOAPO considers the current case to be an example of the complex arrangement homeowners sometimes create in hopes of avoiding regulation, by contracting with an entity that they believe is not covered by the RTA or the UCA. Despite the complexity of the APT arrangement, BCOAPO considers APT to be a “public utility” as defined in section 1 of the UCA.<sup>55</sup>

BCOAPO submits that APT operates equipment and facilities for the delivery of electricity, natural gas, and steam, and notes that APT does not deny this. Further, APT has the right under the Utility Services Contract, to disconnect utility services in response to nonpayment.<sup>56</sup>

BCOAPO notes that APT assumes tasks related to the provision of utility services to Holly Lodge residents, including, among others:

- Contracting for the “provision of services” with APT Enrollees;
- Sending bills to APT Enrollees;
- Receiving payment from APT Enrollees;
- Paying BC Hydro for electricity and FEI for natural gas to the building; and
- Receiving and resolving, with PIC assistance, complaints from APT Enrollees regarding their electricity and gas utilities services.<sup>57</sup>

BCOAPO highlights APT’s explanation that the administration fee was (i) designed to recover the cost of administering the collection of information, analysis of consumption, and generation of bills to tenants, and (ii) helps cover the costs of staff, office, and office equipment directly involved in the provision of services to tenants at Holly Lodge.<sup>58</sup>

Further, BCOAPO disagrees with APT that it is not receiving “compensation” for the provision of services.<sup>59</sup> BCOAPO points to the definition of compensation in the UCA, which reads in part: “a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly.”<sup>60</sup> BCOAPO believes that APT is charging APT Enrollees rates, as defined in the UCA, in the form of delivery and administrative charges.<sup>61</sup>

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<sup>53</sup> Exhibit B-3, IR 2.13.

<sup>54</sup> Ibid., IR 1.1.

<sup>55</sup> Exhibit E-6-1, pp. 1–2.

<sup>56</sup> Ibid., p. 6.

<sup>57</sup> Ibid., pp. 5–6.

<sup>58</sup> Ibid., p. 6.

<sup>59</sup> Exhibit E-6-1, p. 7.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

BCOAPO submits that while the UCA does not define remuneration, the Oxford Dictionary defines it as “an amount of money that is paid to somebody for the work they have done.”<sup>62</sup> BCOAPO submits that this definition can also capture the delivery and administrative fees APT charges its customers.<sup>63</sup> BCOAPO states that:

... it is clear that APT collects from tenants three charges – “Delivery Charges-Electricity”, “Delivery Charges-Gas & Propane”, and the “Administration Fee” – for the delivery and/or provision of electricity, gas, and steam within Holly Lodge. In our view, these charges are rates, as they are charged by a public utility, or remuneration for the operation of equipment and/or facilities for the delivery and/or provision of electricity, natural gas, and steam to enrolled tenants. APT charging enrolled tenants Goods and Services tax (GST) on all line items, including its own delivery and administrative charges, further supports the idea that APT is receiving compensation.<sup>64</sup>

BCOAPO submits that APT’s claims that these charges do not cover the costs of service or that no gain or reward is intended are irrelevant to the question of whether it receives compensation.<sup>65</sup>

BCOAPO concludes that the “extent of regulation required is a question for another day, but the question of whether APT is a public utility must be answered in the affirmative.”<sup>66</sup>

RCIA notes that APT Delivery Charges for electricity do not reconcile with BC Hydro Electric Tariff, resulting in fairness concerns with such charges with respect to APT Enrollees compared to other BC residential ratepayers.<sup>67</sup>

Mr. Wild, a Holly Lodge resident, submits that a utility company should be independent from a rental agency to guarantee fairness. Further, basing costs on square footage does not seem like a legitimate or accurate means to determine a rate of billing.<sup>68</sup>

Mr. Klaver, a Holly Lodge resident, states that when moving to Holly Lodge, he was presented with a form committing to obtaining all utilities from APT, and that refusal to agree to these terms would have endangered his tenancy at Holly Lodge.<sup>69</sup>

Mr. Harmer, also a Holly Lodge resident, submits that without regulation Mr. Wolverton<sup>70</sup> (PIC) can apply whatever charges for utilities he sees fit, noting “[t]here’s a lot of extra ‘handling & delivery’ charges that don’t add up” and that when Mr. Harmer wished to decline APT’s services Mr. Wolverton “told me directly he’d cut my power/ evict me.”<sup>71</sup>

### *APT’s Reply to Letters of Comment*

APT submits that BCOAPO does not acknowledge or address that the total of the monthly bill(s), including rent, to APT Enrollees remains the same as the total was without APT.<sup>72</sup> Further, APT argues that, “[i]f BCOAPO is correct that services are provided by APT for PIC to tenants, that certainly sounds as though BCOAPO is

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<sup>62</sup> Exhibit E-6-1, pp. 7–8.

<sup>63</sup> Ibid., p. 8.

<sup>64</sup> Exhibit E-6-1, p. 9.

<sup>65</sup> Ibid., p. 9.

<sup>66</sup> Ibid., p. 10.

<sup>67</sup> Exhibit E-9, p. 2.

<sup>68</sup> Exhibit E-7.

<sup>69</sup> Exhibit E-4.

<sup>70</sup> Brent Wolverton is identified as the president and a director of PIC, which owns Holly Lodge, as well as the sole director of APT. See Exhibit A2-1, p. 2.

<sup>71</sup> Exhibit E-1.

<sup>72</sup> Exhibit B-8, p. 2.

identifying, indirectly, the provision of services to tenants on PIC's behalf."<sup>73</sup> APT emphasizes that to date no tenant has been disconnected for non-payment to APT.<sup>74</sup>

APT states that it sympathizes with Mr. Wild's desire for a completely independent company and if the BCUC decides in other proceedings that sub-metering companies are something that landlords could avail themselves of, it would be happy to transition to a fully independent solution using one of these providers.<sup>75</sup>

APT submits, in response to Mr. Klaver's comments, that APT was exploring its rights under the RTA to provide services. Further, the total payment required of Mr. Klaver with or without enrollment with APT was the same and not an attempt to demand additional funds.<sup>76</sup>

APT submits that it provides literature to tenants and that a website has been established to provide clarity on how services are calculated, allocated and managed.<sup>77</sup>

### *Panel Determination*

**The Panel finds that APT is a public utility as defined by the UCA.** As we explain below, we are satisfied that APT is a person that operates in British Columbia, equipment or facilities for the sale, delivery or provision of electricity or natural gas to the public for compensation. In the following paragraphs we consider each of the elements of this definition.

First, we consider whether APT is a person within the meaning of the UCA. The term is not defined in the UCA, however, we note that it is defined in the *Interpretation Act* where it has a broad meaning that includes a corporation. APT is a corporation. **Therefore, the Panel finds that APT is a person for the purpose of determining its public utility status under section 1 of the UCA.**

Next, we consider whether APT "owns or operates in British Columbia, equipment or facilities for the delivery or provision of electricity or natural gas". **The Panel finds that APT operates equipment or facilities in British Columbia for the sale, delivery or provision of electricity or natural gas.** The Panel accepts the evidence that PIC, and not APT, owns the facilities that deliver electricity and natural gas to units in Holly Lodge. However, although APT asserts that the "operation of the facilities that generate heat, deliver stove gas within the building, deliver electricity within the building and deliver water within the building is by the Holly Lodge Group", the fact is that the Holly Lodge Group is simply a group of corporations, there is no evidence that it is a legal person. This means that anything that the Holly Lodge Group does, including, in this case, operating the facilities, is actually done by one or more of the corporations comprising the Holly Lodge Group. In the case of operating the electrical and natural gas facilities the evidence before us indicates that APT performs this function. Indeed, the Utility Services Contract between APT and the sub-tenant, i.e., APT Enrollee, states that Utility Services are provided exclusively through APT and that the sub-tenant "requests APT to make the necessary connections to supply utility to the unit". Further, there is the sub-tenant's acknowledgement that failure to pay the monthly utility bill will result in disconnection of services.

The next element to consider is whether APT Enrollees are members of the public within the meaning of 'public utility' in the UCA. APT submits that the public at large does not receive the benefit of the heat, stove gas, or electricity, and nor does the public at large provide payment to the Holly Lodge Group. The Panel disagrees with APT's interpretation of the term public in the definition of public utility. As APT observes, the BCUC addressed

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Exhibit B-4, p. 4.

<sup>76</sup> Exhibit B-4, p. 3.

<sup>77</sup> Ibid., p. 1.

similar issues in two proceedings in 2014<sup>78</sup> and although we are not bound by previous BCUC decisions, we agree with the BCUC regarding the intended scope of the word ‘public’ and that there is an inference that providing a supply or service to others (i.e., persons who are not employees or tenants) is providing to the public. In our view, the APT Enrollee, who is not a tenant of APT<sup>79</sup>, should not lose their status as a member of the public simply by entering into a utility services contract with APT.

Finally, we consider whether APT is compensated for the services it provides. There is no dispute that APT Enrollees pay APT for utility services. The Utility Services Contract establishes that requirement. APT submits, however, that “compensation” is not occurring because it is not a money-making endeavour. APT considers the amounts that APT Enrollees pay for the Delivery Charges reflect reasonable recovery of primary and secondary costs associated with maintaining and operating building equipment to deliver electricity and heat/hot water to tenants, plus a portion of capital costs to replace existing equipment.

The fact that APT is not a money-making endeavour, or that it flows through to tenants a proportionate amount of the building’s electricity and natural gas charges, or that the total of the monthly bill(s), including rent, to APT Enrollees remains the same as the total was without APT, does not alter the fact that it is being compensated for providing utility services to APT Enrollees. To be compensated does not require an element of profit. Despite APT’s assertion to the contrary, we find that its circumstances fall squarely into the meaning of compensation and rate in the UCA and in the definition of public utility. APT has a contract with the APT Enrollees pursuant to which it is paid for, in addition to other things, the provision of electricity and natural gas. **Therefore, the Panel finds that APT is providing electricity and natural gas to the public for compensation.**

The fact that APT’s Delivery Charges for electricity do not reconcile with the BC Hydro Electric Tariff, as RCIA observes, is beyond the scope of this proceeding and can be addressed when permanent rates for APT are established.

## **2.2 Does the part (d) exclusion from the public utility definition apply to APT?**

In addition to defining what a public utility means, the UCA also sets out what is not included in the definition of a public utility. One of these exclusions, part (d), provides that “public utility” does not include “... 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”.<sup>80</sup>

### *Position of APT*

APT submits that even if it met the definition of public utility because of its connection to the operation of any equipment or facilities at Holly Lodge, it would fall within the exclusion set out in (d) of that definition, namely “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”.<sup>81</sup> APT asserts that its connection to the operation of equipment at Holly Lodge “exists solely by virtue of APT being part of the landlord group that undertakes that operation”.<sup>82</sup>

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<sup>78</sup> Person(s) doing business as Casa Del Mila Oro Geothermal and Casa Del Mila Oro Geothermal, Order G-6-14 and Decision dated January 16, 2014; Person(s) doing business as Seascapes Development and Superior Propane, Order G-91-14 and Decision dated July 10, 2014.

<sup>79</sup> The matter of whether an APT Enrollee is a tenant of APT is addressed in section 2.2.

<sup>80</sup> Under section 1 of the UCA a “tenant” does not include a lessee for a term of more than 5 years.

<sup>81</sup> Exhibit B-10, IR 7.2.

<sup>82</sup> Ibid.

APT submits that it would not be logical for APT to be found to have met part (a) of the definition of public utility by virtue of its connection to operations undertaken by the Holly Lodge Group, only then not to be availed of the part (d) exclusion respecting the provision of service to tenants with leases less than 5 years.<sup>83</sup>

APT submits that the definition of “person” in the *Interpretation Act*<sup>84</sup> as well as in the 1938 *Public Utilities Act*, SBC 1938, c 47,<sup>85</sup> supports a conclusion that a collective was contemplated when using the term in the part (d) exclusion.<sup>86</sup>

### *Letters of Comment*

BCOAPO submits that subsection (d) of the definition of “public utility” does not apply to APT, because APT is not the landlord and so cannot be said to be providing service to its tenants.<sup>87</sup> BCOAPO also submits that APT and PIC, as two separate entities, have contracted with each other in order to have APT provide utility services to the residents of Holly Lodge.<sup>88</sup> BCOAPO refers to the statement in the Tenancy Agreement that the utility services are exclusively provided through APT.<sup>89</sup>

BCOAPO submits that APT’s status as a subsidiary of PIC does not affect APT’s legal relationship with the residents of Holly Lodge; APT is a third party that provides utility services to residents.<sup>90</sup> BCOAPO further submits that APT’s third-party status is supported by the Utility Services Contract, which states that “[t]he [Tenant] hereby contracts with APT for the provision of the Utility Services.” As there is nothing in the Utility Services Contract to suggest that APT acts on PIC’s behalf, BCOAPO considers that APT enters into contracts with residents of Holly Lodge as a separate third-party service provider.<sup>91</sup>

### *APT’s Reply to Letters of Comment*

APT submits that BCOAPO’s “third party” characterization of APT is inaccurate as the statement is not supported by BCOAPO’s recognition that APT is factually and legally a subsidiary of PIC and that APT has no employees of its own.<sup>92</sup>

### *Panel Determination*

Having found that APT meets the criteria of a public utility as defined in the UCA, the Panel considers below whether APT meets the criteria for exclusion from BCUC public utility regulation. Specifically, whether APT provides the service only to APT’s employees or tenants.

**The Panel finds that APT does not meet the criteria set out in (d) for exclusion from the definition of public utility because APT does not have tenants.** That is not the end of the matter, however, because APT asserts that just as its connection to the operation of equipment at Holly Lodge exists solely by virtue of APT being part of the landlord group that undertakes that operation, so too should that connection to the landlord group avail APT of the exclusion in part (d).

APT is incorrect when it states that its connection to the operation of equipment at Holly Lodge exists solely by virtue of it being part of the landlord group. Whether or not APT is part of the landlord group is irrelevant because the evidence clearly establishes that APT, and not the landlord group, operates the equipment for the

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<sup>83</sup> Ibid.

<sup>84</sup> [RSBC 1996], c.328.

<sup>85</sup> Exhibit B-10, IR 7.2, Footnote 2.

<sup>86</sup> Ibid., IR 7.2.

<sup>87</sup> Exhibit E-6-1, p. 2.

<sup>88</sup> Ibid.

<sup>89</sup> Exhibit E-6-1, p. 2–3.

<sup>90</sup> Exhibit E-6-1., p. 3.

<sup>91</sup> Ibid.

<sup>92</sup> Exhibit B-8, p. 2.

provision of utility services. Whether APT is a subsidiary of PIC, a member of the Holly Lodge Group, or a third party as BCOAPO asserts, is tangential to the Panel's determination that APT operates the equipment or facilities for the provision of electricity and natural gas.

APT submits that the term 'person' in the part (d) exclusion could encompass a collective noun rather than an individual, in this case a single corporation. To support this submission, APT relies on the definition of "person" in the *Interpretation Act*: "person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law." However, there is no evidence that the Holly Lodge Group is a corporation, partnership, or a party.

APT also submits that one of the predecessor statutes to the UCA, the *Public Utilities Act* 1938, supports its interpretation that a collective was contemplated when using the term in the part (d) exclusion because it defined "person" as including "a natural person, a partnership or two or more persons having a joint or common interest". We have no evidence, however, to explain why this no longer appears in the UCA or whether the Legislature intended to retain such a broad definition of "person". In fact, the change in definition of person from 1938 to the present seems to support the opposite of APT's interpretation because whereas the *Public Utilities Act* considered that a person could be two or more persons having a joint or common interest, the UCA now only refers to "person" singular and not multiple "persons". Moreover, APT has not persuaded us of a 'joint or common interest' given that PIC is established to maintain the building and APT is established to maintain utility services.

### **2.3 Overall Determination**

For the reasons discussed above, the Panel finds APT to be a public utility under section 1 of the UCA and that the exclusion in the public utility definition part (d) does not apply to APT.

As a public utility, APT must provide a service that the BCUC considers is in all respects adequate, safe, efficient, just and reasonable. Furthermore, the charges that APT bills to its customers for regulated services (electricity, natural gas, Delivery Charges electricity, Delivery Charges natural gas, and administration fee) must be reviewed and determined by the BCUC.

Having determined that APT is a public utility, the BCUC orders as follows:

1. APT is a public utility as defined in section 1 of the *Utilities Commission Act* (UCA).
2. APT is directed to file with the BCUC a plan for obtaining all required regulatory approvals for its rates (electricity, natural gas) for service provided under the UCA, and operating system within 60 days of this order.
3. APT is directed to file with the BCUC interim tariff pages reflecting rates for service provided under the UCA that are currently being charged to customers for BCUC endorsement within 30 days of this order.
4. Pursuant to section 90 of the UCA, the current rates for service provided under the UCA that APT charges to its customers are made interim as of the date of this order and any differences between the interim and permanent rates, once approved by the BCUC, will be refundable or recoverable with interest calculated at the average prime rate of APT's principal bank for its most recent fiscal year.
5. APT is directed to provide a copy of this order to all APT Enrollees as a bill insert in the next billing cycle or within 30 days, whichever is sooner.

6. APT is directed to publish a copy of this order on the homepage of its website within 15 days of this order and the order is to remain on APT's website for a minimum of 60 days from the date it is first published.
7. APT is directed to file an Annual Report with the BCUC within 4 months of its fiscal year end, in accordance with BCUC letter L-46-23.

**DATED** at the City of Vancouver, in the Province of British Columbia, this

18<sup>th</sup>

day of April 2024.

*Original signed by:*

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B. A. Magnan  
Panel Chair

*Original signed by:*

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E. B. Lockhart  
Commissioner



**Figure 1 – Sample APT Bill for Utility Services from October 2022**<sup>93</sup>

### Statement

**APT Utility Corp**

P O Box 48143  
Vancouver, BC  
V7X 1N8

**TO:**

1210 Jervis Street  
Vancouver, BC V6E 2E2



Billing Period	Statement Date
10/01/22 - 10/31/22	09/28/22

Property	Unit	Type	Acc #
APT Utilit		2-Bed+Den	

Previous Balance	Current Charges	Current Credits	Balance Due
0.00	506.48	0.00	506.48

Last Payment	Amount Enclosed
9/3/22 \$500.01	

PLEASE RETURN TOP PORTION WITH YOUR REMITTANCE

[illegible]

<sup>93</sup> Exhibit B-6, Appendix A, p. 4.