IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Richmond (City) v. British Columbia Hydro and Power Authority,* 2026 BCSC 312

Date: 20260226
Docket: S242215
Registry: Vancouver

Between:

City of Richmond

Petitioner

And

British Columbia Hydro and Power Authority

Respondent

-and-

Docket: S242806
Registry: Vancouver

Between:

City of Surrey

Petitioner

And

British Columbia Hydro and Power Authority

Respondent

Before: The Honourable Justice E. Sigurdson

Reasons for Judgment

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Place and Dates of Hearing:	Vancouver, B.C. July 8–10, 2025
Place and Date of Judgment:	Vancouver, B.C. February 26, 2026

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I. OVERVIEW

[1] The City of Richmond (“Richmond”) and the City of Surrey (“Surrey”) each bring petitions for judicial review, challenging decisions made by the British Columbia Hydro and Power Authority (“BC Hydro”) respecting annual payments made to Richmond and Surrey.

[2] The payments in question are grants in lieu of property taxes (“GILT”) paid by BC Hydro in respect of land and buildings owned by BC Hydro within the municipalities. The question I must answer is whether BC Hydro made reasonable (and therefore lawful) decisions about how much they would pay.

[3] Prior to 2022, BC Hydro paid Richmond and Surrey, as well as all other local governments in British Columbia, the maximum GILT permitted under the legislative regime. They did so every year, invariably, for every municipality. In 2022, 2023 and 2024, BC Hydro elected to pay Richmond and Surrey less than the maximum GILT and chose to base the amount they did pay on a previous year’s lower tax rate.

[4] I have concluded that, based on the authority delegated to them under the applicable legislative scheme, BC Hydro has a broad discretion respecting the payment of GILT. This discretion is confined by reasonableness, but does not mandate a specific approach when making the decisions in issue in this proceeding.

[5] BC Hydro’s decades of invariable practice in providing the maximum payment of GILT led to the municipalities’ reasonable expectations about the basis on which GILT would be calculated and paid to them annually. The history of consistent practice meant that BC Hydro was required to provide an explanation to Surrey and Richmond for their departure for their departure from that practice and for choosing a different approach. In this case, I conclude that BC Hydro provided an explanation for taking a different approach, and that this explanation established a foundation for the reasonableness review of the decisions in issue.

[6] Finally, I have considered each of the petitioners’ arguments for why BC Hydro’s approach was unreasonable at law. On review of the rationale provided and

the record of the decisions, I have found that BC Hydro provided justification for its decisions. I conclude that in the circumstances before me, the decisions in issue are not unreasonable. They are reasonably justified, transparent and intelligible.

II. FACTUAL BACKGROUND

[7] The central facts in this case are not disputed.

A. Parties

[8] The petitioners are British Columbia municipalities. Richmond is the fourth largest municipality in the province by population size, with a population of approximately 210,000. Surrey is the second largest with a 2021 population of approximately 570,000.

[9] Municipalities and their governments are responsible for providing local services and governance to the vast majority of British Columbia's population. They are governed by the *Local Government Act,* R.S.B.C. 2015, c. 1 and either the *Community Charter,* S.B.C. 2003, c. 26 or the *Vancouver Charter,* S.B.C. 1953, c. 55. Their governing legislation requires municipalities to impose property taxes on land and improvements within each municipality.

[10] The respondent BC Hydro is a regulated public utility and statutory corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212 [*HPAA*]. BC Hydro is an agent of the government, and its powers may only be exercised as such: *HPAA*, s. 3(1).

[11] BC Hydro's sole shareholder is the Province of British Columbia. BC Hydro's primary purpose is to "generate, manufacture, conserve, supply, acquire and dispose of power and related products" and to provide services in relation to this purpose: *HPAA*, s. 12(1.1). BC Hydro generates and delivers electricity to 95% of the population of the province and is regulated by the BC Utilities Commission ("BCUC").

B. Legislative Scheme

[12] The decisions under review in this case were made pursuant to a statutory scheme, the understanding of which provides the necessary legal context for the scope of BC Hydro's discretion and the reasonableness of its decisions.

1. Grant in Lieu of Taxes

[13] As a public entity, BC Hydro is exempt from most forms of taxation, including municipal property taxes: s. 32(1) of the *HPAA*; s. 220(1)(a) of the *Community Charter*; s. 396(1)(a) of the *Vancouver Charter*.

[14] However, BC Hydro owns property within municipalities and benefits from the infrastructure and services of those municipalities. Instead of paying municipal property taxes, BC Hydro pays GILT to municipalities across British Columbia pursuant to s. 34 of the *HPAA* and Order in Council 266/2016 ("2016 OIC").

[15] Section 34(1) of the *HPAA* provides:

> **Taxation**
>
> **34** (1) With the approval of the Lieutenant Governor in Council, the authority may make annual grants to the Surveyor of Taxes with respect to a rural area and to municipalities and other local governments within the territorial jurisdiction of which the authority generates, transmits or sells electric power or otherwise carries on business.

[16] A provision to this effect has existed in the *HPAA* since its enactment in 1964.

[17] BC Hydro's GILT payments must be made in accordance with the 2016 OIC. The 2016 OIC provides for grants to municipalities, rural areas, taxing treaty first Nations, and the Nisga'a Nation.

[18] The 2016 OIC sets a maximum amount for the GILT payment. This maximum is calculated using the municipal tax rate set by the municipality for the previous

taxation year. Section 3(2) of 2016 OIC provides that the maximum grant amount is the sum of two components:

> a) 1% of the authority's gross revenue from sales of electricity within the municipality during the 12-month period ending March 31 of the year preceding the taxation year in respect of which the grant is made;
>
> b) the amount equal to the municipal taxes that, had the authority been liable in the previous taxation year to pay municipal taxes in relation to land or applicable improvements, or both, that are owned by the authority and located within the municipality, would have been payable by the authority to that municipality for that taxation year.

[19] The first component in s. 3(2)(a) is referred to as the “1% of revenues” component and the second component in s. 3(2)(b) is referred to as the “Land and Buildings” component. The Land and Buildings component refers to the municipality’s tax rate for the previous year, used to determine the maximum amount under s. 3(2)(b). The 2016 OIC does not otherwise prescribe the GILT amount.

[20] The maximum grant under the 2016 OIC is in the same form as in its predecessor, Order in Council 1218/1965 issued April 27, 1965 (the “1965 OIC”). Unlike the 2016 OIC, the 1965 OIC provided a minimum amount that would apply if BC Hydro made an annual grant to a municipality, based on the sum paid by BC Hydro’s precursor in 1961. No minimum is required by the 2016 OIC, and there is no calculation provided for any measure of GILT other than the maximum. Within the statutory scheme at least, payment of GILT each year is not mandatory.

[21] The 2016 OIC instructs BC Hydro to provide municipalities with notice on or before March 31 of each year of the amount of GILT BC Hydro has determined to be payable, and to make the GILT payment on or before November 30 each year.

[22] The maximum Land and Buildings component depends on a determination of the previous year’s applicable municipal taxes that would apply to the assessed value of BC Hydro’s land and improvements if they were owned by an entity subject to taxation. Subsection 3(1) of the 2016 OIC defines “municipal taxes” as:

> (a) section 197 (I) (a) and Divisions 4 and 5 of Part 7 of the *Community Charter* for municipal revenue purposes,

> (b) sections 373 and 459 and Part XXIV of the *Vancouver Charter* for municipal revenue purposes,
>
> (c) sections 385 and 386 of the *Local Government Act* [R.S.B.C. 2015, c. 1] for regional district service purposes, or
>
> (d) sections 47 (2) (b) and 49 of the *Islands Trust Act*, for purposes of the operations referred to in section 47 (2) (b) of that Act.

[23] I was advised by counsel that the 2016 OIC was replaced on July 6, 2024, with Order in Council No. 449/2024 ("2024 OIC"). The 2024 OIC provisions respecting grants to municipalities contain minor changes in wording and changes to provisions related to grants payable to Treaty First Nations and Nisga'a Nation but are otherwise identical to the provisions in the 2016 OIC.

2. Municipal Taxation

[24] Richmond and Surrey collect property tax in accordance with s. 197 of the *Community Charter*. To impose taxes under s. 197(1)(a), each year Richmond and Surrey are required to adopt a bylaw establishing rates for each property class under the *Assessment Act,* R.S.B.C. 1996, c. 20. Each municipality must set their annual tax rates after they have adopted their annual budget, and the rates are determined based on the tax revenue requirements in the budget. These tax rates must be set by May 15 of each year, and they are typically expressed as the amount of tax payable per thousand dollars of the assessed value of a property (or the "mill rate").

[25] Municipalities can impose different tax rates on property classes established under the *Assessment Act*, which distinguish between the different uses of property such as residential, industry, farm and others. Municipalities have discretion in setting tax rates, within the limits set out in legislation.

[26] The majority of BC Hydro's property is classified as "Class 2 – Utilities" ("Utilities Class"). There is a maximum tax rate and ratio applicable to the Utilities Class, which is the greater of $40 per $1,000 of assessed value (mill rate of 40) or 2.5 times the Business (Class 6) property tax rate. This maximum rate is set in the *Taxation Rate Cap for Class 2 Property Regulation,* B.C. Reg. 329/96, established under the *Community Charter*, the *Vancouver Charter*, and the *Sechelt Indian*

Government District Enabling Act, S.B.C. 1987, c. 16*.* The Utilities Class rate is the tax rate used to calculate the Land and Buildings component.

3. BC Hydro Mandate and Planning

[27] BC Hydro reports to the government through the Ministry of Energy, Mines, and Low Carbon Innovation (the "Ministry"). The Ministry provides BC Hydro with a mandate letter every two years. These mandates in 2021–2022 and 2023–2024 included a priority to keep electricity affordable by ensuring rates do not increase above inflation over the next decade.

[28] BC Hydro must prepare an annual service plan pursuant to the *Budget Transparency and Accountability Act*, S.B.C. 2000, c. 23. In the service plans for the period of 2021–2024, BC Hydro's goals for delivery of services have included managing and controlling costs to provide affordable and competitive rates for electricity service. BC Hydro's five-year strategy similarly includes the goal of managing costs.

[29] The revenue side of BC Hydro's cost management is linked to the rates that it charges for electricity service. BC Hydro's rates are set by the BCUC and cannot be revised unilaterally. The rates are based on an assessment of BC Hydro's projected costs for delivery of service. The BCUC approves the recovery of costs by BC Hydro that it finds are reasonable and prudent.

[30] BC Hydro submits rates for approval by the BCUC in advance of the applicable year. For example, for the rates applicable to the 2022 fiscal year, BC Hydro submitted a Revenue Requirements Application to the BCUC in December 2020. The BCUC decision respecting rates for 2022 was given July 16, 2021.

C. BC Hydro's GILT Payments prior to 2022

[31] BC Hydro relied on evidence from Allan Leonard, BC Hydro's Executive Vice-President, who explained that each year BC Hydro determines for each municipality whether to pay an annual grant and, if so, the amount of the grant to be paid. Mr. Leonard attests these decisions are based on the circumstances particular to each

individual municipality, a consideration of all municipal grants that may be paid in a given year, and of BC Hydro's position and circumstances more broadly. Richmond argues that there is no evidence of individualized annual consideration of GILT, and that the process was simply that prior to 2022, the maximum GILT was calculated for each municipality, and paid.

[32] It is common ground among the parties that, in every year prior to 2022, BC Hydro paid a grant to each municipality and did so for the maximum permitted GILT amount under the 1965 OIC and then the 2016 OIC. This practice was not prescribed in the regulation or in any other policy instrument, but it is agreed that it was the approach, invariably, every year until 2022.

[33] In 2020, 114 municipalities received GILT payments from BC Hydro. BC Hydro identified that the largest municipalities in the province—which include Surrey and Richmond—receive a majority of the total GILT payments each year. BC Hydro's evidence is that total GILT payments have been increasing in recent years; between 2010 and 2020, total payments increased from $52.0 million to $95.8 million.

D. The Decisions: BC Hydro's 2022, 2023 and 2024 GILT Payments to Richmond and Surrey

[34] In 2022, 2023 and 2024, BC Hydro exercised their discretion to pay Richmond and Surrey a reduced GILT (the "Decisions"). The Land and Buildings portion of the reduced grant was calculated based on Richmond's 2020 and Surrey's 2019 municipal tax rate for the applicable property class.

1. The Municipalities' Rate Changes and BC Hydro's 2021 Review

[35] Between 2005 and 2019, Surrey's tax rate for the Utilities Class fluctuated between approximately $28.3 and $34.5, and at no point did it increase by more than two points year to year. In 2020, Surrey increased their tax rate for the Utilities Class from $28.27 to $39.80—a 41% increase. BC Hydro submits that none of the

other 15 municipalities with the largest Land and Building components for the maximum grant increased their Utilities Class tax rate by more than 10% in 2020.

[36] Between 2005 and 2020, Richmond's tax rate for the Utilities Class varied between $28.40 and $40, but the rate was never raised by more than five points from year to year. In 2021, Richmond increased their tax rate for the Utilities Class from $28.4 to $39.95—also a 41% increase. BC Hydro submits that none of the other 15 municipalities with the largest Land and Buildings components for the maximum grant increased their Utilities Class tax rate by more than 7% in 2021, except for Port Moody, which increased by 14%.

[37] An increase in a municipality's Utilities Class tax rate has a direct impact on BC Hydro's corresponding maximum GILT payment. The increase in Richmond and Surrey's tax rates projected substantial increases to BC Hydro's GILT payments to Richmond and Surrey, if BC Hydro continued to use the maximum grant amount.

[38] Surrey's 41% increase to the Utilities Class tax rate, combined with a 15% increase in the assessed value of BC Hydro's property, resulted in a $6.2 million increase to their GILT payment in 2020—amounting to $16.2 million for the Land and Buildings component and $19.6 million total. BC Hydro took issue with the increases, citing concerns about the financial interest of ratepayers from other regions and questions of fairness.

[39] In 2021, BC Hydro initiated an internal review of its grant payments, with a focus on the grants paid to the 15 municipalities who receive the largest payments. This occurred following increases in tax rates by Surrey in 2020 and Richmond in 2021. BC Hydro's review was not complete by March of 2021, when it was required to send notice of the amount payable for the GILT to municipalities. BC Hydro did not mention to Surrey the possibility of paying less than the maximum permitted amount at that time.

[40] During a meeting in July 2021, Surrey representatives told BC Hydro they had increased their Utilities Class tax rate from $39.80 to $40 so as to limit the increases to the residential and business classes.

[41] In November 2021, BC Hydro wrote to Surrey to advise that while BC Hydro would pay the maximum authorized amount for 2021, applying Surrey's 2020 tax rate for the Utilities Class, BC Hydro was "reviewing [its] options to exercise [its] discretion to pay less than the maximum authorized amount in 2022 to those municipalities with significant increases, which includes Surrey".

[42] BC Hydro and Surrey engaged in discussions and correspondence about BC Hydro's GILT payment over the following months. During these discussions, BC Hydro's representatives provided background and context about BC Hydro's GILT payments to Surrey and explained why BC Hydro was considering paying less than the maximum.

[43] At that time, BC Hydro explained that they have the discretion to pay less than the maximum GILT and asked to meet to discuss the issue. Surrey responded to BC Hydro that they were being unfairly "singled out".

[44] BC Hydro ultimately paid Surrey the maximum grant for 2021, despite their serious concerns about the sudden increase in the Utilities Class tax rate, citing a concern that Surrey had received insufficient notice of the change in BC Hydro's approach.

[45] In October 2021, Richmond advised BC Hydro of its increase to the Utilities Class tax rate from $28.4 to $39.95. This led to a series of correspondence between BC Hydro and Richmond between October 2021 to March 2022. In this correspondence, Richmond explained their increase to the Utilities Class rate was due to a decrease in the net assessment value for taxable properties by 25.72%. BC Hydro responded by noting the net value of BC Hydro's Utilities Class properties had increased by 10.5% and therefore, Richmond's rationale was in direct conflict with BC Hydro's circumstances.

[46] On November 16, 2021, BC Hydro advised Richmond that BC Hydro was considering exercising their discretion to remit a reduced GILT payment due to Richmond's increased 2021 Utilities Class tax rate.

[47] On January 21, 2022, Richmond responded to BC Hydro's November 2021 correspondence, rejecting BC Hydro's assertion that they could pay Richmond less than the full GILT payment and directing BC Hydro to raise any concerns with the valuation of its properties to BC Assessment.

[48] BC Hydro took the position that it has discretion to pay less than the maximum amount and offered to meet Richmond to discuss. Richmond was not prepared to meet to discuss a lesser GILT payment.

2. BC Hydro's 2022 Decisions

[49] On March 31, 2022, BC Hydro wrote to both Surrey and Richmond indicating that BC Hydro would be reviewing their options to pay less than the maximum authorized amount for the 2022 GILT payment, and advised of their preliminary decision for the GILT payment to consist of the full 1% of revenue component and a Land and Buildings component equal to the amount paid in 2020 for Surrey and equal to the amount paid in 2021 for Richmond. BC Hydro cites the increase in the Utilities Class tax rate as the rationale for not paying the maximum grant.

[50] In communications with both Surrey and Richmond, BC Hydro referred to their discussions and correspondence in 2021 and said:

> As a public utilities company, BC Hydro is regulated by the BC Utilities Commission (BCUC). We can recover only an approved amount for our projected expenses through the electricity rates that we charge to our customers. The projections for our grant payment expenses are based on reasonable annual inflationary increases. The percentage increase to the maximum authorized grant payment to your municipality is much greater than what we would reasonably expect for an annual increase. As such, we are reviewing our options to exercise our discretion to pay less than the maximum authorized amount for the Land & Buildings component of the grant for 2022.

a) Surrey

[51] On May 9, 2022, Surrey reduced their Utilities Class tax rate from $40 to $35.84.

[52] On June 30, 2022, BC Hydro issued a letter to Surrey confirming the reduced 2022 GILT payment of $16,258,432.74, indicating their use of Surrey's 2019 Utilities Class tax rate rather than the 2021 tax rate.

[53] BC Hydro's use of the 2019 Utilities Class tax rate to calculate the GILT resulted in a difference of $5,135,978.40.

[54] On August 23, 2022, Surrey wrote to BC Hydro seeking clarification of BC Hydro's reasons for applying the 2019 rate. BC Hydro responded confirming that the rationale was based on concerns indicated in BC Hydro's previous correspondence, including that "there does not appear to be a reasonable rationale for [Surrey's] tax rate increases on Utilities-class property owners".

[55] On September 23, 2022, Surrey wrote to BC Hydro detailing their view of why BC Hydro's use of Surrey's 2019 tax rate was unreasonable, describing Surrey's tax rate as reasonable because it is within the permitted maximum and consistent with other municipalities. Surrey rejected the legitimacy of BC Hydro's differential treatment, and stated that it is unreasonable for BC Hydro to require Surrey to justify its tax rate. Surrey requested BC Hydro reconsider the decision to use the 2019 tax rate and to make a supplemental payment to address the shortfall.

[56] On November 30, 2022, BC Hydro confirmed they would not make any supplemental payments to Surrey, given their concern about the increase in the municipal tax rate for the Utilities Class in 2021 and 2022.

[57] On February 2, 2023, the mayor of Surrey, Brenda Locke, wrote to BC Hydro's Chief Executive Officer, Chris O'Riley, to request that BC Hydro make a supplemental payment to increase the 2022 grant to the maximum amount. Mr.

O'Riley responded by letter of February 22, 2023, and advised that BC Hydro declined to make a supplemental payment.

[58] Surrey asserts that BC Hydro failed in their November 2022 and February 2023 correspondence to be responsive to Surrey's concerns outlined in their September 23, 2022, letter.

[59] BC Hydro's calculations indicate that in 2022, BC Hydro paid Surrey a total grant in the amount of $16.26 million, and provided the following context:

> As compared to 2021, the total grant for 2022 was approximately $3.4 million (17%) lower and the Land and Buildings component was approximately $3.4 million (21%) lower. However, as compared to 2020, the year before Surrey's sudden increase to its Utilities tax rate was applicable, the total grant for 2022 was approximately $2.9 million (22%) higher and this increase was almost entirely attributable to the approximately $2.9 million increase in the Land and Buildings component (the 1% of revenue component increased by only $48,000 from 2020 to 2022).

b) Richmond

[60] In 2022, Richmond changed its Utilities Class tax rate from $39.95 to $38.53.

[61] On June 30, 2022, BC Hydro notified Richmond of the amount for the 2022 GILT payment of $2,808,373.82, confirming their use of Richmond's 2020 Utilities Class tax rate as opposed to the 2021 tax rate. In the correspondence, BC Hydro acknowledged their departure from its established practice for calculating GILT.

[62] BC Hydro's use of Richmond's 2020 Utilities Class tax rate to calculate the GILT resulted in a difference of $796,938.36. On August 11, 2022, Richmond sent correspondence to BC Hydro raising concerns with BC Hydro's reduced GILT payment, asking for BC Hydro to pay the shortfall of $796,938.36, and repeating their recommendation that BC Hydro raise its concerns with BC Assessment.

[63] On September 30, 2022, Richmond sent a letter to Bruce Ralston, Minister of Energy, Mines and Low Carbon Innovation, and Doug Allen, BC Hydro's Board Chair, to seek "immediate intervention" with respect to BC Hydro's grant payment for 2022. Richmond's letter reiterated their position that BC Hydro lacks the discretion to

pay less than the maximum GILT amount and stated that Richmond's Utilities Class rate is consistent with rates set by other municipalities.

[64] On November 2, 2022, Minister Ralston responded, explaining the Ministry and BC Hydro's concern regarding increases in GILT payments to municipalities. Minister Ralston noted that based on BC Hydro's internal review of GILT payments undertaken over the last two years, Richmond is one of two municipalities with the most significant annual increase connected to grants paid for Land and Buildings. With regards to Richmond's concern over BC Hydro's lack of discretion, he confirms the Minister's position that BC Hydro does have the ability to exercise their discretion on the amount of GILT, and in fact, BC Hydro has a responsibility to act prudently when setting the GILT amount and consider the potential financial impact BC Hydro customer rates.

[65] On November 30, 2022, BC Hydro confirmed they would not be making any supplemental payments to Richmond, reiterating their concerns over the increase in the municipal tax rate for the Utilities Class in 2021 and 2022 and fairness to ratepayers.

[66] BC Hydro calculates that it paid Richmond a total grant for 2022 in the amount of $3.9 million, and provided this context:

> BC Hydro paid Richmond a total grant for 2022 in the amount of $3.9 million. Compared to 2021, this was an increase of 2% for the total grant, and an increase of approximately 9% for the Land and Buildings component.

[67] BC Hydro summarizes that its communications conveyed the following to both Richmond and Surrey:

a) BC Hydro was concerned about the sharp increase in the Utilities Class tax rates and did not accept either municipality's justification for the increase;

b) The unanticipated increase that would result in the maximum GILT to each municipality would have to be recovered from customers across the province, raising concerns about fairness and equity;

c) BC Hydro must manage costs so as to provide affordable rates;

d) BC Hydro has been increasingly concerned about the growth in the Land and Buildings component of the GILT in recent years;

e) BC Hydro had initiated a review of its payments; and

f) BC Hydro made the decision to pay Richmond and Surrey less than the maximum due to their uniquely large rate increases.

3. BC Hydro's 2023 and 2024 Decisions

[68] In 2023 and 2024, in the face of Surrey and Richmond's tax rates, BC Hydro continued the course of action commenced in 2022. In the spring of 2023 and 2024, BC Hydro notified Surrey and Richmond of the reduced GILT amount for the upcoming year, reiterating concerns about the Land and Buildings component based on the high Utilities Class rate and the requirement for BC Hydro to consider the affordability for all customers in BC.

[69] In March 2023, BC Hydro provided notice of its preliminary grant decisions to all other applicable municipalities. The notice included that BC Hydro was considering changes to the calculation of the Land and Buildings component of the GILT payment for future years, citing significant concerns about the increase in payments to some municipalities both as a result of rising property assessment values and municipal tax rates. BC Hydro advised it wants to keep rates affordable for customers across the province. In 2024, upon making the 2023 GILT payments to municipalities, BC Hydro provided a further notice reiterating these concerns and flagging possible changes.

[70] In 2024, BC Hydro identified eight other municipalities for which the maximum GILT had undergone a significant increase, and wrote to those municipalities advising of BC Hydro's concern and intended review. As of September 2024, BC Hydro had followed up and met with six of the eight municipalities.

a) Surrey

[71] On May 1, 2023, Surrey reduced their Utilities Class tax rate from $35.84 to $35.20.

[72] In 2023 and 2024, BC Hydro continued to apply Surrey's 2019 Utilities Class tax rate for the Land and Buildings portion of the GILT payment. In June of 2023, Surrey received the 2023 GILT payment of $19,955,870, which was $4,260.382.82 less than the maximum authorized amount. In July of 2024, Surrey received the 2024 GILT payment, which was $5,543,064.12 less than the maximum authorized amount.

[73] Surrey estimates that BC Hydro's use of Surrey's 2019 Utilities Class tax rate in the GILT payment calculations for 2022, 2023 and 2024, has resulted in a $14,989,425.34 shortfall compared with the approach BC Hydro previously applied, paying maximum GILT.

b) Richmond

[74] In 2023, Richmond reduced their Utilities Class tax rate from $38.53 to $36.67.

[75] BC Hydro continued to use Richmond's 2020 Utilities Class tax rate for the Land and Buildings portion of the GILT payment in 2023 and 2024.

[76] In June of 2023, Richmond received the 2023 GILT payment from BC Hydro, which was $845,917.69 less than the maximum allowed under the 2016 OIC. In July of 2024, Richmond received the 2024 GILT payment, which was $909,393.66 less than the maximum authorized amount.

[77] Richmond estimates that BC Hydro's use of Richmond's 2020 Utilities Class tax rate in the GILT payment calculation for 2022, 2023 and 2024, has resulted in a $2,552,249.71 shortfall.

III. THE DECISIONS

[78] In summary, the decisions in issue on judicial review are as follows:

a) **2022**: BC Hydro paid Surrey and Richmond GILT for 2022 consistent with the 1% of revenue component, and the Land and Buildings component calculated using the assessed values for 2021 and the Utilities Class tax rates for the year before their respective 41% rate increases (2019 for Surrey and 2020 for Richmond). As a result:

   i. BC Hydro paid Surrey a total grant for 2022 in the amount of $16.26 million.

   ii. BC Hydro paid Richmond a total grant for 2022 in the amount of $3.9 million.

   iii. BC Hydro declined to make a supplemental payment to increase the 2022 grant to the maximum amount.

b) **2023**: BC Hydro continued to pay Surrey and Richmond GILT based on their 2019 and 2020 Utilities Class tax rates, respectively. As a result:

   i. BC Hydro paid Surrey a total grant for 2023 in the amount of $20 million.

   ii. BC Hydro paid Richmond a total grant for 2023 in the amount of $4.56 million.

c) **2024**: BC Hydro continued to pay Surrey and Richmond GILT based on their 2019 and 2020 Utilities Class tax rates, respectively. As a result:

   i. BC Hydro paid Surrey a total grant for 2024 in the amount of $26.5 million.

   ii. BC Hydro paid Richmond a total grant for 2024 in the amount of $5.1 million.

(Collectively, the “Decisions”).

IV. ISSUES

[79] The question before me is whether, given the facts, the statutory framework and the nature of the Decisions, the Decisions made by BC Hydro respecting the payment of GILT to Surrey and Richmond were reasonable and should be deferred to, or were unreasonable and should be interfered with by this Court.

[80] Surrey and Richmond argue a number of indicia of unreasonableness that I will address in this judgment. The municipalities adopt and expand upon one another's arguments, and assert that the Decisions were unreasonable because:

a) BC Hydro departed from a previously consistent funding practice;

b) the GILT payments did not follow the tax system in fact in place at the time;

c) the Decisions treated Surrey and Richmond differently from other municipalities;

d) BC Hydro based the Decisions on an irrational concern, being that the increase in Surrey and Richmond's grant would have to be subsidized by other ratepayers; and

e) BC Hydro based the Decisions on an illegitimate critique of Surrey's municipal taxation decision and the reasons for it.

[81] I conclude that the Decisions were reasonable.

V. REASONABLENESS REVIEW

[82] I first set out a general discussion of the appropriate approach and methodology for judicial review; I have broken this analysis into its key features.

A. Principle of Legality

[83] In *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada described a framework for the process of reasonableness review. Reasonableness review is concerned with the fulfilment of

two critical roles: the legislature's role and its intent to delegate decisions to an administrative decision maker; and the constitutional role of the court to ensure such decisions are subject to the rule of law: *Vavilov* at para. 82.

[84] The starting point for judicial review is that all exercises of administrative authority made pursuant to statute or regulation are reviewable by the courts for their conformity with the law. This means that a court may determine whether administrative decisions are consistent with the authority that has been delegated by legislature, and whether the decisions are reasonable or correct depending on the applicable standard.

B. Burden

[85] The parties agree, and I accept, that the standard of review of BC Hydro's Decisions respecting the calculation of GILT paid to Richmond and Surrey is reasonableness. Accordingly, the burden is on Richmond and Surrey to prove that BC Hydro's decisions were unreasonable: *Vavilov* at para. 100.

C. Restraint and Robustness

[86] Reasonableness review starts from the principle of judicial restraint and respect for the distinct role of administrative decision makers: *Vavilov* at para. 13. It remains a robust form of review and is not a means of sheltering administrative decision makers from accountability. *Vavilov* outlines the correct understanding of and approach to reasonableness review, emphasizing the balance a reviewing court must strike between restraint in interference and the robustness of the judicial review process:

> [12] … Reasonableness review is methodologically distinct from correctness review. It is informed by the need to respect the legislature's choice to delegate decision-making authority to the administrative decision maker rather than to the reviewing court. In order to fulfill *Dunsmuir*'s promise to protect "the legality, the reasonableness and the fairness of the administrative process and its outcomes", reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions: para. 28.
>
> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in

> order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.
>
> [14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" (2014), 64 *U.T.L.J.* 458, at pp. 467-70.

D. Reasonableness in Light of Process and Outcome

[87] The culmination of the restraint versus robustness balancing exercise is a review focused on the decision made, including both the reasoning process and the outcome: *Vavilov* at paras. 15, 83. The role of the court is to review a decision and determine whether the rationale and outcome are reasonable, without substituting the decision the court would have made itself, but instead determining whether the decision fits within the range of possible conclusions open to the decision maker: see *Vavilov*:

> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

[88] In *Vavilov*, the Court outlines a reasons-first approach and specifies that the reasons are the way the decision maker communicates the rationale for its decision; thus, a principled approach puts the reasons first: at para. 84. Understanding the reasoning that led to the decision through "respectful attention" allows a court on review to understand whether the decision as a whole is reasonable: *Vavilov* at paras. 84–85. A reasonable decision, being one based on an internally coherent and

rational chain of analysis and justified in light of the facts and law constraining the decision maker, will be deferred to: *Vavilov* at para. 85. One way of taking an appropriately deferential stance is to respect the decision-making process by attending to the reasons provided: *Vavilov* at para. 86. Those reasons must provide justification, as even a reasonable outcome cannot stand if reached on an improper basis: *Vavilov* at paras. 86–87. The court's focus on review must be on the decision that was made, and how it was made, not how the court could have reached a different decision in the decision-maker's place.

E. Reasonableness Review With or Without Reasons

[89] The BC Court of Appeal, with reference to *Vavilov,* considered the approach to reasonableness review with either the presence or absence of reasons in *Central Saanich (District) v. McHattie*, 2023 BCCA 461 [*McHattie*]. The Court emphasized that different decisions may or may not require reasons, or require different sorts of reasons, depending on the context:

> [31] In *Vavilov*, the Court began its discussion of reasonableness review with the acknowledgement that not all statutory decision makers will be required to provide formal reasons for their decisions. Whether or not reasons are provided will impact how a court conducts reasonableness review: *Vavilov* at para. 76. The question of whether reasons are required must be answered with reference to contextual factors identified in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817.
>
> [32] Where reasons are required, the focus of reasonableness review is to review the decision, which includes both the decision maker's reasoning process and the outcome: *Vavilov* at para. 83. The reasons are "the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first.": *Vavilov* at para. 84.
>
> [33] Where reasons are not required, the "reviewing court must look to the record as a whole to understand the decision": *Vavilov* at para. 137. Where "neither the record nor the larger context sheds light on the basis for the decision…the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable": *Vavilov* at para. 138. Without formal reasons, the focus will inevitably be on the outcome of the decision, rather than the reasoning process.
>
> …

> [35] In *Vavilov*, the Court described two types of fundamental flaws which may render a decision unreasonable: (1) a failure of rationality internal to the reasoning process; and (2) a decision that is in some respect untenable in light of the relevant factual and legal constraints: *Vavilov* at para. 101. By necessity, where the decision maker is not required to provide reasons or the reasoning underlying a key aspect of their decision is unclear, the reviewing court's focus will be on the latter type of flaw: *Yu* at para. 51.

[90] A reviewing court must seek to understand the decision-maker's process to determine if the decision bears the hallmarks of reasonableness: justification, transparency and intelligibility. When considering the hallmarks of an unreasonable decision, the Court in *Vavilov* considers two types of fundamental flaws: first, a failure of internal coherency; and second, a factual and/or legal constraint that makes the decision untenable: at para. 101.

1. Internally Coherent Reasoning

[91] A reasonable decision is both rational and logical. The Court in *Vavilov* opines that the reviewing court must be able to trace the decision maker's line of reasoning from analysis to conclusion without encountering any fatal flaws in its logic: *Vavilov* at para. 102. In trying to understand the underlying rationale there "are no substitute[s] for statements of fact, analysis, inference and judgement": *Vavilov* at para. 102. If there are formal reasons, the reviewing court must read them with sensitivity to the administrative regime in which they were given and in conjunction with the record before them: *Vavilov* at para. 103.

2. Factual and Legal Considerations

[92] The Court in *Vavilov* set out that in addition to the need for coherence, the decision must be "justified in relation to the constellation of law and facts that are relevant to the decision": Vavilov at para. 105.

[93] In *McHattie* at para. 36, the Court references a list of factual and legal considerations relied on in *Vavilov* at para. 106, that will frame the process of reasonableness review. The following are "overlapping and non-exhaustive" factual and legal considerations which may constrain a decision maker:

(1) the governing statutory scheme;

(2) other relevant statutory or common law;

(3) the principles of statutory interpretation;

(4) the evidence before the decision maker and facts of which the decision maker may take judicial notice;

(5) the submissions of the parties;

(6) the past practices and decisions of the administrative body; and

(7) the potential impact of the decision on the individual to whom it applies.

[94] As noted in *Vavilov* at para 106: “These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context”. They can provide context to assist the court in whether it has confidence in the outcome of the decision.

F. Summary

[95] Professor Paul Daly provides the following summary of applicable principles for reasonableness review drawn from *Vavilov* in Paul Daly, “The Scope and Meaning of Reasonableness Review after *Vavilov*”, (2025) 63:1 *Alberta Law Review*, 2025 CanLIIDocs 2593, at 12, and I find these to be a helpful guide:

a) The burden is on the applicant to show that a challenged decision is unreasonable; (*Vavilov* at para. 100)

b) Reasonableness review is a “robust form of review”; (*Vavilov* at para. 13)

c) Judicial review requires a reasons-first analysis where reasons are required to be given; (*Vavilov* at para. 81)

d) A reviewing court does not conduct a *de novo* analysis to identify what the decision ought to have been; (*Vavilov* at paras. 83–84)

e) Reasonableness depends on sensitivity to legal and factual constraints; (*Vavilov* at para. 90)

f) Reasonableness requires an appreciation for institutional context and background; (*Vavilov* at para. 93) and

g) "Administrative Justice" will not always look like "judicial justice" (*Vavilov* at para. 92).

[96] Consistent with the foregoing, Surrey's summary of my task is fair and apposite:

> In summary, *Vavilov* requires administrative decision makers to render decisions that are based on an internally coherent and rational chain of analysis and that are justified in relation to the facts and law that constrain the decision maker. A decision is unreasonable where the reasons for that decision contain a fundamental gap or reveal that the decision was based on an unreasonable chain of analysis. A decision is also unreasonable where it does not sufficiently account for applicable factual and legal constraints, including the rationale of the governing statutory scheme. Where a decision departs from longstanding precedent, a decision maker bears the justificatory burden of the departure from precedent. Where reasons are available, those reasons are the focus of reasonableness review. Where reasons have not been provided, a reviewing court should attempt to discern the reasons from the record. Defective reasoning will render a decision unreasonable and it is generally not open to either a decision maker or the court to bolster defective reasoning on a post-hoc basis.

VI. WERE THE DECISIONS REASONABLE?

[97] Richmond asks this Court to find BC Hydro's 2022, 2023 and 2024 decisions to be unreasonable; Surrey asks this Court to find the 2022 and 2023 decisions to be unreasonable.

[98] Broadly, the petitioners submit that BC Hydro's Decisions are unreasonable because they are an improper exercise of discretion under the *HPAA*, they contradict the governing statutory scheme, they are discriminatory, and BC Hydro's rationale for the Decisions is unjustified or irrational. BC Hydro responds that given its unique context as a Crown corporation, its mandate, and the governing statutory scheme, it has exercised its discretion in a measured and permissible manner. Further, BC Hydro says it provided Richmond and Surrey with reasonable and responsive justification for the Decisions.

[99] In carrying out the reasonableness review of the Decisions, I start with what I view to be the two fundamental factual and legal constraints in issue in this case:
a) the broad scope of BC Hydro's discretion in the governing statutory framework;

and b) the role of BC Hydro's invariable past practice. I then address the petitioners' further arguments for the unreasonableness of the Decisions.

A. Scope of BC Hydro's Discretion

[100] The statutory framework for the Decisions is a key factual and legal consideration and provides the grounding for review of the Decisions' reasonableness. The *HPAA* and the 2016 OIC provide BC Hydro with the authority to make a discretionary decision respecting payment of GILT to municipalities. This framework sets out a broad scope of discretion which I must consider in determining whether the decision itself is reasonable.

[101] This Court's 1990 decision in *Burnaby (City of) v. British Columbia (Hydro and Power Authority),* 1990 CanLII 676 (B.C.S.C.) [*Burnaby*] provides the only judicial consideration of the scope of the specific discretion underlying the Decisions. *Burnaby* was not decided in the context of a judicial review, so it does not provide meaningful guidance in terms of how the available discretion may or ought to be exercised, nor does it speak to modern reasonableness review under *Vavilov*. It does, however, address the breadth of BC Hydro's decision-making power under the *HPAA* GILT regime.

[102] The regime discussed in *Burnaby* is not identical to the present regime. As noted above, in 1990, the GILT process under the *HPAA* included both a ceiling and a floor for the grant amount that could be approved by the Lieutenant Governor in Council.

[103] The Court in *Burnaby* stated at 20–21:

> Section 54(1) [now s. 34] of the *Hydro and Power Authority Act* distinctly states that Hydro may make annual grants but only with the approval of the Lieutenant-Governor-in-council. A grant is commonly understood to mean and to be used as meaning in the context of money the gift of money for a particular purpose. Order-in-Council 1218 cannot and does not override the language of s. 54 and impose upon Hydro a duty to pay to any municipality any sum of money in lieu of property taxes. It is true that the opening sentence of paragraph 1 of 1218 says: "Commencing with the year 1965 each municipality be paid an annual grant" but that language of ostensible obligation must be seen in the context of the manner in which

> 1218 came to be made. The Executive Council had before it the permissive language of s. 54(1) of the 1964 Act. Its task was to prescribe guidelines in the making of grants so that the Lieutenant-Governor-in-Council could say to Hydro "a grant of money by you to a municipality in lieu of property taxes has our approval if it complies with these guidelines". They drew the guidelines and recommended to the Lieutenant-Governor-in-Council for their approval. He did approve but he did not and could not command Hydro "thou shalt pay". A regulation must be read as subject to an implied proviso that nothing in it shall be construed to authorise a departure from the provisions of its parent statute. Belanger v. R. (1916), 1916 CanLII 87 (SCC), 54 S.C.R. 265; Re Kroseel (1972), 1972 CanLII 423 (ON CA), 1 O.R. 895 (Ont. C.A.); R. v. Sigmund (1979), 1979 CanLII 615 (BC CA), 14 B.C.L.R. 125 (C.A.).
>
> Subject, therefore, to the liberty which Hydro has to exercise its discretion whether to make a grant or, having decided to make a grant, the amount thereof from "floor" to "ceiling", what "ceiling" grant may it lawfully make?

[104] The decision in *Burnaby* holds that BC Hydro's scope of discretion includes whether to make a grant, and if so, to determine an amount within the range in place at that time, being somewhere between the floor and the ceiling.

[105] Under the present scheme, with the permissive language the legislature has chosen, BC Hydro similarly has the discretion to make a grant, up to the maximum amount set by the formula provided in the *HPAA* and 2016 OIC. The Petitioners agree that, in general, the discretion afforded to BC Hydro is broad, but is confined by reasonableness. BC Hydro also agrees that the reasonableness of its exercise of discretion is informed by fairness and equity. Consistent with *Burnaby,* the delegated discretion about whether and how much GILT to pay is broad.

[106] The municipalities and BC Hydro both rely on the Supreme Court of Canada's decision in *Montréal (City) v. Montréal Port Authority*, 2010 SCC 14 [*Montréal*] as guidance for the scope of BC Hydro's discretion. In that case, the Supreme Court held that a decision by two federal Crown corporations to make payments in lieu of taxes ("PILT") under the *Payments in Lieu of Taxes Act,* R.S.C. 1985, c. M-13 [*PILT Act*] to the City of Montréal were arbitrary and unreasonable. The payments, which were required to be based on an "effective rate", were made with reference to a prior tax regime in *Montréal* rather than the current one. The particular issue of whether it was unreasonable to rely on a spent tax rate is addressed more specifically below.

[107] Richmond argues that *Montréal* supports the petitioners' arguments that BC Hydro's discretion should be understood as limited to basing its calculations for GILT on the actual current tax system of those municipalities. BC Hydro argues that *Montréal* does not assist the petitioners in arguing that BC Hydro's discretion is constrained other than by the bounds of reasonableness. They submit that in *Montréal* the scheme for payments by Crown corporations included a mandatory minimum as well as a maximum. The minimum under the PILT scheme is calculated as the product of the value of the property and the "corporation effective rate" which was defined as the rate a corporation determines is applicable to its property if it were taxable.

[108] I agree with BC Hydro that the landscape in *Montréal* is significantly different than the present case. In that case there was a set minimum payment, and that figure was calculable based on a formula which the Court determined must be anchored to a present (effective) tax rate. In this case, there is no minimum GILT payment in the legislation. Further, the issue here does not require an interpretation of a maximum payment; only whether payment less than the maximum is unreasonable.

[109] I agree with both parties that *Montréal* presents helpful principles, including that reasonableness must be grounded in the specific statutory scheme. But I do not find that it articulates a general principle that confines BC Hydro's discretion, granted under different legislation, to anchoring its GILT payment (other than the maximum) to a specific or current year.

[110] I note that BC Hydro further argued that the approach in the 2016 OIC is not the only methodology by which BC Hydro calculates grants to municipalities. Other grants may be paid by BC Hydro pursuant to orders in council which provide for a precise amount to be determined by application of a mathematical formula (i.e. OIC 268/2011 as amended by OIC 239/2025). In respect of GILT, the legislature chose the approach in the 2016 OIC.

[111] I conclude based on the legislation and the above-noted authorities that the discretion available to BC Hydro under the *HPAA* is very broad. Indeed, other than a maximum, the applicable scheme provides no parameters for GILT payments.

[112] Nevertheless, statutory discretion is never unfettered, even where a decision maker appears to have been given broad or unrestrained discretion around funding or payment: *Ontario (Attorney General) v. Restoule,* 2024 SCC 27 [*Restoule*] at paras. 152–154. In *Restoule,* the Supreme Court of Canada confirms that discretionary decisions, while they do not direct a specific outcome, are implicitly constrained by reasonableness. The principle of legality requires that discretion be exercised within a legal framework, and such decisions are not without any limits or constraints. Any discretionary decision, even where a payment is not mandatory, is limited by the rule of law and principles of reasonableness including that the basis for the decision cannot be irrational or arbitrary.

B. Consistent Past Practice for GILT Payments

[113] The second factual and legal constraint that guides my review is the fact that BC Hydro established a longstanding and invariable practice in its provision of annual GILT payments. All parties agree that until 2022, BC Hydro paid the maximum amount of GILT available under the legislative scheme to all municipalities. The petitioners allege that the departure in 2022–2024 was unreasonable and unjustified.

[114] BC Hydro's invariable past practice gives rises to two interrelated issues in this proceeding: first, whether departure from past practice requires a decision maker to issue formal reasons; and second, whether a decision departing from invariable past practice is *prima facie* unreasonable.

[115] As I set out below, I view the departure from invariable practice as giving rise to a need to explain the departure and provide a transparent rationale, but I do not find that it is a *prima facie* indicator of unreasonableness of the decision itself.

1. Departure From Past Practice Requires Explanation

[116] The parties diverge subtly on the question of whether formal reasons were required to be given for the Decisions. Surrey says reasons were required, and they were provided in the form of correspondence, but they nevertheless demonstrate an unreasonable decision. Richmond says that BC Hydro's decision did not call for formal reasons but that the rationale was discernible from the record and was unreasonable. BC Hydro says that reasons were not required, formal reasons were not given, and in any event the record reveals the rationale for the Decisions and it is reviewable.

[117] BC Hydro argues that even if the Decisions are a departure from past practice, it does not make them *prima facie* unreasonable; it means that BC Hydro has the burden to explain the departure. The "explanatory principle" outlined in *Vavilov* expresses that where a decision maker departs from longstanding practices, it "bears the justificatory burden of explaining that departure in its reasons": *Vavilov* at para. 131. BC Hydro emphasizes that it is not an administrative tribunal, to which this principle has clearest application per *Vavilov* at paras.129–132).

[118] BC Hydro further submits that the concern around an unjustified departure from past practice arises only where the decision maker does not treat like cases alike. Here, BC Hydro says that it did not treat Richmond or Surrey differently than other similarly-situated municipalities. BC Hydro argues that, in any event, it did explain the departure.

a) Some Reasons were Required; Reasons were Provided

[119] The Court in *Vavilov* confirmed that for a departure from a longstanding practice to be found to be reasonable, the departure (i.e. not the substance of the decision or the result) must be justified. The Court considered the effect of past practices and past decisions on reasonableness review, and held that administrative decision makers are not bound by their previous decisions in the same sense that courts are bound by *stare decisis*: *Vavilov* at paras. 129. In reference, generally

speaking, to administrative decisions of a more quasi-judicial nature, the Court held that those affected by decisions are "entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker—expectations that do not evaporate simply because the parties are not before a judge": at para. 129. Despite the focus in *Vavilov* on decisions of a quasi-judicial nature, I find that, in principle, the following comment is applicable to BC Hydro's Decisions in this case given the invariable practice in place until 2022:

> [131] Whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Where a decision maker does depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable. In this sense, the legitimate expectations of the parties help to determine both whether reasons are required and what those reasons must explain: Baker, at para. 26. We repeat that this does not mean administrative decision makers are bound by internal precedent in the same manner as courts. Rather, it means that a decision that departs from longstanding practices or established internal decisions will be reasonable if that departure is justified, thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers and in the justice system as a whole.

[120] A decision-maker's past practices do not necessarily bind them or preclude them from departing from their prior approaches. The "explanatory principle" articulated in *Vavilov* nevertheless applies here, meaning that a decision maker, in order to provide a reasonable decision, must explain their departure. In other words, "a decision found to be an unexplained departure from past decisions and practices is itself unreasonable": *North Cowichan (Municipality) v. 1909988 Ontario Limited*, 2021 BCCA 414 at para. 69.

[121] BC Hydro's marked departure from its previously invariable practice required justification for its change in approach. The municipalities had generated a reasonable reliance on the approach consistently taken by BC Hydro over the decades, and departure from it has had a significant effect on their financial planning. Accordingly, express reasons were necessary.

[122] There is a distinction between what are understood as “formal reasons”, being a recitation of the background, framework, applicable standards, decision and justification in a manner appropriate to an adjudicative tribunal; and a communicated “rationale” or explanation, which I would define as sufficient information for affected parties to understand the reason the decision-maker has departed from its previously invariable practice, with the ability to assess whether that reason is rational and legally justifiable.

[123] The Decisions before me did not require a formal set of written reasons as would be provided by an adjudicative tribunal, but a degree of clarity was required. Here it is well within the decision-maker’s ability and expertise to communicate decisions transparently, and they may do so by providing reasoned justification for decisions in the form of correspondence or other communications that fit the nature of the relationship between the parties.

[124] I find that BC Hydro did communicate a rationale and explanation for its departure from past practice. It did so in the course of its correspondence with Surrey and Richmond. Explanations were given that were understandable and were linked to BC Hydro’s mandate. The substance of the explanations and whether they withstand reasonableness review are addressed next.

C. The Decisions were Reasonable

[125] In the circumstances of this case, I find that departure from past practice, even invariable practice, on its own does not render the Decisions unreasonable. There may be other circumstances where that conclusion might be reached, but in this case where the discretion available to the decision-maker is very broad, and the mandate it must pursue involves balancing a range of interests, a departure from past practice alone does not constitute unreasonableness.

[126] I proceed to consider whether BC Hydro’s explanations provided a rational and transparent basis for the Decisions, or whether the Decisions were unreasonable in substance for relying on a tax rate that is not current, for discriminating or treating Surrey and Richmond arbitrarily, for relying on a stated

concern for equity and fairness for other ratepayers, or for relying on a critique of the municipalities' taxation rationale.

1. The Rationales Given by BC Hydro

[127] Richmond says that on a review of the record, BC Hydro's stated rationales for the Decisions and the departure from past practice do not meet a standard of reasonableness. Richmond says that what the record reveals is:

> Generously interpreted, BC Hydro's rationale, as communicated to Richmond, for reducing its GILT payment in 2022 was that Richmond's 2021 Class 2 rate increase in 2021 would have otherwise produced an unexpected increase for BC Hydro that raised an affordability concern. However, BC Hydro failed entirely to address the issue of why such a departure was justified in view of its past practice, and its 2022 treatment of similarly situated municipalities.

[128] Richmond further submits that BC Hydro's rationales fail to address critical factors, including statistical information indicating that Richmond's tax rate was not in fact an outlier requiring different treatment.

[129] Surrey says that the correspondence provides the reasons, and the reasons provided do not justify the Decisions. Surrey submits that the central reason for the Decisions was stated in correspondence from BC Hydro:

> In our view this unprecedented increase is being subsidized by BC Hydro customers from all other regions of the province and raises the question of fairness and equity.

[130] BC Hydro says that the record makes clear that it exercised its discretion to pay Surrey and Richmond less than the maximum grants in 2022–2024 for the following four reasons.

[131] First, Richmond and Surrey increased their tax rates for the Utilities Class by about 41%, which BC Hydro describes as precipitous and says is disconnected from the provision of services to BC Hydro. BC Hydro says that Surrey admitted to increasing its 2020 rate to secure a larger grant and to limit tax increases on other classes. Richmond stated that its 2021 rate increase was in response to a reduction in value of the taxable property in the Utilities Class, which BC Hydro points out was

inconsistent with its circumstances as their tax-exempt property had actually increased in value.

[132] Second, BC Hydro says that the precipitous increases in grant payments, driven by the municipalities' tax rates, flow through to electricity charges paid by customers. These increases would have to be recovered from ratepayers across the province, which raises question of fairness and equity.

[133] Third, BC Hydro's fiscal planning had included a moderate increase in the grants for Surrey and Richmond, and not the large increase driven by a 41% rate increase for the Utilities Class. BC Hydro's own rates are only somewhat within BC Hydro's control, as they must be approved in advance by the BCUC.

[134] Fourth, BC Hydro says that its GILT payments increased significantly and in an accelerating manner in the years leading up to 2020, and this had become a point of concern for BC Hydro's financial management. BC Hydro stated that it had to respond to this ongoing increase especially after Surrey's increase in 2021 and Richmond's in 2022.

[135] BC Hydro says these four reasons were all explained over 2021–2023 and are apparent in the record.

[136] In summary, BC Hydro's rationale was that Richmond and Surrey's increases to their tax rates, and the effect of this on BC Hydro's practice of providing maximum GILT payments was inconsistent with BC Hydro's financial circumstances, obligations to the provision of service to all rate payers, and the planning they had done based on a lower rate of increase. This provides a rational basis for the Decisions which is transparent and intelligible. The municipalities may disagree with it, but the basis for BC Hydro's Decisions is clear from the record.

[137] I next address the petitioners' arguments that the basis for the Decisions was unreasonable in principle.

2. Was it Unreasonable for BC Hydro not to Base GILT on the Tax Rate in Place at the Time.

[138] Richmond argues that the *HPAA* and the 2016 OIC contemplate that grants should be fair and equitable, and that they should be based on the actual tax system in place at the time, not an arbitrary or "fictitious" selection of a tax rate applicable at a different time. For this argument, Richmond relies on *Montréal*, discussed above. In that case, a decision by federal Crown corporations to make PILT payments with reference to an old tax regime rather than the current regime was found to be arbitrary and unreasonable. The corporations made payments at a rate that allowed them to avoid an increase that would have resulted from an increase in property tax, and in doing so placed themselves on a different footing than other taxpayers having similar properties in the city.

[139] In *Montréal,* the Crown corporations had made a minimum payment to municipalities but had calculated it based on an effective rate that was not based on the municipality's existing tax scheme. The issue for the Court was therefore whether the corporations' interpretation of "corporate effective rate" was reasonable: *Montréal* at para. 31. The Court found their interpretation was not reasonable, because of specific requirements in the *PILT Act* and corresponding regulations which required that the tax rate be determined as if the federal property were taxable property belonging to a private owner. The misdeed was the Crown corporations' failure to comply with the specific constraints in the legislation around payment of a minimum PILT: *Montréal* at para. 40.

[140] In *Montréal*, the Supreme Court of Canada concluded the decisions of the corporations were inconsistent with the legislation and were arbitrary; therefore, the decisions were deemed unreasonable: paras. 37–47. The Court concluded:

> [46] Thus, the purpose of the *PILT Act* is to establish a system of payments in lieu that reflects the actual tax situation in the places where federal property is located. The evidence shows that the Department of Public Works and Government Services calculated its PILTs for "departmental" property in Montréal as proposed by the City, as it did not reduce the amounts to take the abolition of the business occupancy tax into account.

> [47] The respondents' decisions were consistent neither with the principles governing the application of the *PILT Act* and the *Regulations* nor with Parliament's intention. The way they exercised their discretion led to an unreasonable outcome that justified the exercise of the Federal Court's power of judicial review.

[141] Richmond submits this is similar to BC Hydro's action taken in this case. In *Montréal*, the corporations were unhappy about the city's tax rate increase and treated Montréal differently from other municipalities by calculating PILT based on a different chosen rate. Here, Richmond analogizes, BC Hydro relied on an old and no longer effective tax rate.

[142] Richmond submits that features of the GILT regime are similar to the PILT regime, leading to similar inferences about fairness and equity, and the need for connection to the actual tax systems in place at the time. They emphasize three features of the legislation which they say imply limitations on BC Hydro's decision-making:

a) Section 34(1) authorizes BC Hydro to make grants to "municipalities". Richmond argues that this language means that in making decisions BC Hydro must consider municipalities as a group and treat them on a similar basis.

b) The 2016 OIC provides grant approval for s. 34(1) purposes by setting the same formulaic cap for all municipalities.

c) The 2016 OIC ties GILT payments to the actual tax regime of municipal grant recipients, by setting a cap that refers to the actual cap regime.

[143] Richmond submits that by basing payment decisions on a spent tax bylaw, BC Hydro tied GILT payments to a "fictitious system they themselves have created arbitrarily" just as in *Montréal* at para. 40.

[144] Richmond further submits that BC Hydro's discretion to pay less than the maximum is irrelevant because it is not just that Richmond received less than the maximum grant; it is that Richmond and Surrey received less than the maximum

while all other municipalities received the maximum, and that BC Hydro did this on the basis of a ‘fictitious tax system’.

[145] Richmond suggests that the objectives of the *HPAA* are similar to those in the legislation in *Montréal*, being tax fairness for municipalities and the preservation of constitutional immunity from taxation. In *Montréal*, the Court suggested that reconciliation of these objectives may only be attained by “retaining a structured administrative discretion where the setting of the amounts of payments in lieu of taxes is concerned”: at para. 20. Richmond says that BC Hydro abandoned the structured discretion implicit in the statutory features of the scheme and chose a fictitious structure.

a) BC Hydro’s Response

[146] BC Hydro agrees that fairness and equity are to some extent implicit in the requirement to be reasonable in decision-making but does not agree that the Decisions were inequitable, unfair or arbitrary.

[147] BC Hydro submits that Richmond’s arguments largely ignore the reality of the statutory scheme selected by the legislature, and distinguishes the decision in *Montréal,* arguing that *Montréal* in fact support’s BC Hydro’s position.

[148] BC Hydro emphasizes critical distinctions between the *HPAA* scheme and the PILT scheme in *Montréal*. In *Montréal*, the legislation provided that the corporations *must* make payments in lieu of property taxes; and that those payments *must not be less* than the product of the effective rate of tax and property value. In that case, the corporations had defined a “corporation effective rate” that was not based on the municipality’s existing tax scheme. The Court found this approach to be unreasonable because the legislation required that the tax rate be calculated as if the property were taxable property belonging to a private owner: *Montréal* at para. 40.

[149] BC Hydro argues the GILT scheme is critically different. The 2016 OIC indicates a maximum payment, and here BC Hydro exercised its discretion not to pay the maximum. BC Hydro submits:

> The issue here is not whether BC Hydro's means of calculating the impugned grants reflects a reasonable interpretation of the maximum stipulated by the 2016 OIC (which would be somewhat analogous to *Montreal*, albeit in a very different statutory scheme) but rather whether BC Hydro's decisions to pay less than the maximum were reasonable (which is not at all analogous). Thus *Montreal* does not provide the "useful guidance" that Richmond and Surrey suggest, and their mistaken reliance on the decision demonstrates the degree to which their argument is not grounded on a proper understanding of the statutory scheme at issue here.

[150] BC Hydro submits that while *Montréal* does not govern the outcome of this case, it provides some general applicable principles, being that: a) a reasonableness analysis is grounded in the statutory scheme; b) in decisions related to management of Crown property, judicial deference is appropriate; and c) there is a practical necessity for managers of crown property to retain discretion over the amount of a payment in lieu of tax so they can respond accordingly when municipalities use their taxing power in bad faith to target Crown property.

b) Conclusion

[151] I am persuaded that *Montréal* is distinguishable. BC Hydro's use of a spent (or fictitious) tax rate to calculate what it views as a reasonable GILT payment in the context of the benefits BC Hydro receives from the municipalities is not unreasonable in the circumstances.

[152] Under the scheme applicable to the Decisions, there is no constraint on how BC Hydro may tabulate its GILT payments other than setting the maximum. The scheme simply provides no guidance, and therefore affords broad discretion (subject to fairness), on any GILT below the maximum. It is clear to me that the governing scheme gives latitude to the decision maker not to pay the maximum every year.

[153] The scheme under the *HPAA* does not mandate an approach for any amount other than the maximum. The upper limit for GILT under the *HPAA* is based on

existing tax rates. If the upper limit were in issue and a spent tax rate were being applied, that might be a direct application of *Montréal*. But the fact that this was an improper approach in *Montréal* does not mean it was not within the range of possible, acceptable outcomes available to BC Hydro for the Decisions in this case. The petitioners have not shown that within the meaning of reasonableness, as articulated in *Vavilov,* BC Hydro's use of a previous tax rate to arrive at a calculation for GILT somewhere below the maximum is inconsistent with rationality or fairness.

[154] In this case, the use of a spent tax rate from a previous year appears to be a message from BC Hydro to Surrey and Richmond about what represents a level of GILT that satisfies BC Hydro's various obligations, including to all ratepayers. The rate-setting conversation between the parties does not appear to be an illegitimate forum in which BC Hydro and the municipalities may influence one another's funding decisions. I find that BC Hydro must be afforded latitude in selecting the amount of GILT up to the maximum authorized, as well as in the measures they use to determine those amounts.

3. Was BC Hydro's Differential Treatment of Richmond and Surrey Unreasonable?

[155] Richmond argues that BC Hydro's application of one funding model to Richmond and Surrey, and another to all other municipalities, was arbitrary, unfair and discriminatory, and therefore, legally unreasonable.

[156] In support of this argument, Richmond highlights that in 2021, 46 municipalities had a higher Utilities Class tax rate than Richmond, in 2022, that number rose to 56 municipalities, and in 2023, to 62 municipalities. Richmond further argued that certain metrics in the evidence indicate that from 2005–2023 Richmond and Surrey were not outliers, including:

a) In five of those years, Vancouver had a higher rate than Richmond;

b) In that time there have been 54 instances where a municipality has raised its Utilities Class tax rate by a greater percentage than Richmond's increase in 2021; and

c) In that time there were 49 instances of a municipality raising its Utilities Class tax rate by more than $11.55 per thousand dollars (Richmond's 2021 Utilities Class tax rate change).

[157] Richmond argues that these metrics show that BC Hydro's treatment of Richmond and Surrey has been unfair and discriminatory, inconsistent with an implied statutory requirement that municipalities be treated fairly and equally. Richmond argues that it has simply been unfairly singled out, and that if BC Hydro were concerned with fairness and equity it would have focused on those municipalities whose tax rates had long been at the maximum or near maximum levels, rather than Richmond and Surrey who had more recently raised their rates.

[158] Richmond says that BC Hydro's reliance on Richmond and Surrey's Utilities Class tax rate percentage increase as the reason for differential treatment is not reasonable when other municipalities had raised their rates by a greater percentage and BC Hydro did not alter the formula for their GILT payments.

[159] The principle at the heart of Richmond's submission is that it is arbitrary and unfair to base the GILT payment model on Richmond's relative size, and on the absolute cost of a GILT payment to Richmond relative to other municipalities. Instead, GILT payments should vary by reference to the value of BC Hydro properties in those municipalities. Richmond argues that BC Hydro's failure to acknowledge this is contrary to a necessary linkage in the GILT regime between the value of property held in each municipality, which stands as a proxy for the level of service and benefit that BC Hydro receives in that municipality.

a) BC Hydro's Response

[160] BC Hydro submits the municipalities' arguments that they were singled out or that the Decisions were unfair, inequitable or discriminatory are undermined by

these municipalities' failure to acknowledge their unique conduct during the relevant time, which justified differential treatment. BC Hydro says that the petitioners rely on comparisons to rates or rate increases of smaller municipalities or to years well in the past. BC Hydro's evidence is that none of the comparable municipalities in terms of size and land holdings increased their Utilities Class tax rates to the same degree; only Surrey and Richmond increased their rates so precipitously. This is why they received less than the maximum permitted grant.

[161] BC Hydro submits that since the Decisions were made in response to an emergent financial problem caused by accelerating growth in the maximum grants, their response was reasonable: to focus on the largest municipalities, which collectively account for around 85% of the total grant cost, and to focus on rate changes.

[162] BC Hydro submits that it did not arbitrarily or irrationally single out Richmond and Surrey for unique treatment, rather it addressed the two largest municipalities with the same approach to the tax increase, in the same period, in the same way. It further submits the broader context during this time, that BC Hydro was conducting a broader review of grant payments and had started to give notice to all municipalities about a potential change in approach. Richmond and Surrey were at the leading edge of a change that was contemplated to be applied more broadly in subsequent years, given its complexity. BC Hydro says it is reasonable for this process to be pursued incrementally.

[163] BC Hydro further argues that the petitioners are not charged with proving that there was a fairer or more reasonable approach available, but to show that these Decisions are unreasonable. Relying on *Vavilov* at para. 83, BC Hydro emphasizes that the court does not ask what decision it would have made or seek the correct or fairest conclusion, but it must evaluate whether what transpired was unreasonable.

b) Conclusion

[164] The thrust of Richmond's submission is that treating Surrey and Richmond differently by paying them a lower rate of GILT than others, singles them out unfairly

and is unreasonable for being arbitrary. The argument is normatively appealing in that one measure of fairness can be whether the same standard or rate is applied to all.

[165] I do not accept that the municipalities being treated differently by one measure necessarily amounts to unfairness or unreasonableness. I view this argument as of a kind with the argument that departure from invariable practice is unreasonable. In the same manner that departure from the practice of paying the maximum had to be explained, departure from the practice of paying all municipalities GILT on the identical basis had to be explained to avoid an unreasonable decision.

[166] BC Hydro explained that the reason for treating Surrey and Richmond differently was that they were the two largest municipalities which both had the same degree of Utilities Class tax rate increase, and the largest municipalities account for the most significant share of the GILT payments that are made by BC Hydro, so they have the greatest impact.

[167] I agree it was possible for BC Hydro to address the cost of GILT payments in other ways, including by reducing payments across the board. However, it is not for this Court to determine the best or fairest way, it is to assess whether what was done was within an acceptable range. In this case, BC Hydro provided an explanation for its departure from measuring GILT for all municipalities on an identical basis, and I accept that it was reasonable.

4. Was BC Hydro's Concern About Fairness to Ratepayers Reasonable?

[168] Surrey argues that BC Hydro's concern about subsidizing other ratepayers' costs due to Surrey and Richmond's rate increases was central to the Decisions, and that this was unreasonable. BC Hydro stated in November 2021 that it was concerned with Surrey's tax increase, and wrote "this unprecedented increase is being subsidized by BC Hydro customers from all other regions of the province and raises the question of fairness and equity". BC Hydro reiterated this concern in

correspondence from November 2022 when it declined to make a supplemental payment and from February 2023 when it repeated its concerns about the sharp increase in the city's tax rate.

[169] Surrey argues that implicit in this conclusion is BC Hydro's belief that other customers, by paying higher rates, would be conferring a benefit on Surrey that was disproportionate to any benefits they enjoyed from Surrey. Surrey argues that this proposition requires an assessment of what benefits customers outside of Surrey enjoy from Surrey's "hosting and servicing" of BC Hydro infrastructure. BC Hydro properties include, for example, a construction office for BC Hydro projects, a corporate office and operations centre, a BC Hydro training centre, and a substation used for the export of power to the United States, which provides revenue. These properties are all for the collective benefit of all BC Ratepayers.

[170] Surrey submits BC Hydro's reasons are lacking analysis that provides assessment of whether the benefits other customers in BC receive as a result of Surrey's infrastructure are proportionate to the cost paid by those customers if BC Hydro pays Surrey the maximum GILT. BC Hydro does not explain why paying the maximum GILT would amount to a subsidy, what the relevant considerations are for identifying a subsidy, and how Surrey could determine what rates would not produce an amount BC Hydro considers a subsidy.

[171] Surrey argues that this rendered BC Hydro's decisions unreasonable.

a) BC Hydro's Response

[172] BC Hydro submits that Surrey's argument is misplaced because the record is clear that the concern about subsidization by other ratepayers was only one of several considerations driving the Decisions.

[173] Furthermore, BC Hydro says, Surrey misunderstands BC Hydro's statements, which were made in respect of the degree of the increase, not the total dollar value of the change. BC Hydro submits its conclusion did not require grounding in extensive economic analysis comparing infrastructure, revenue, and grant payments

in each municipality. The tax rise was an increase designed by Surrey to obtain a larger grant from BC Hydro in order to limit the tax rate increase for residential and business classes, and this difference would have to be recovered by rates paid by customers across the province.

b) Conclusion

[174] I conclude that the rationale respecting subsidization provided a reasonable explanation of BC Hydro's concerns about the impact rapidly rising GILT payments would have on all ratepayers. The concerns expressed are substantively valid and consistent with BC Hydro's mandate. The system under which BC Hydro may charge ratepayers requires that their rates be set in advance, and with the approval of the BCUC. The rates that are charged are based on BC Hydro's financial outlook, which is tethered in part to the GILT that is paid. When the GILT amount increases at an unexpected rate, BC Hydro may face shortfalls because the rates set with the BCUC do not account for the rate of change and the revenue from ratepayers will not achieve a balance. Ultimately, all of BC Hydro's costs are public costs, and their burden is carried by ratepayers throughout the province.

5. Was BC Hydro's Critique of Surrey's Tax Rate Irrational?

[175] Surrey argues that BC Hydro unfairly critiqued Surrey's decision to increase its Utilities Class tax rate, suggesting that the increase did not have a reasonable rationale. Surrey submits that this unfair critique was at the centre of the Decisions, and was not a reasonable basis for the Decisions. Surrey referred *inter alia* to correspondence from BC Hydro from November 24, 2021, which expressed concerns with Surrey's tax rate, saying "there does not appear to be a reasonable rationale for your tax rate increase on Utilities-class property owners". The correspondence explains that Surrey receives the largest grant payment among all municipalities where BC Hydro pays GILT. BC Hydro goes on to express that the next two largest municipalities (after Surrey and Richmond) "adjust their tax rates downwards when the assessed values increase so that the annual tax revenue increases are reasonable".

[176] Surrey argues that there is no basis on which BC Hydro could conclude that Surrey's tax rates were unreasonable, given statistics for the rates set by other local governments, which indicate that Surrey was not in fact an outlier when evaluated more broadly. Surrey further argues that the reasonableness of a municipal bylaw must be assessed with consideration of the wide variety of factors that municipal governments may legitimately consider. BC Hydro was not in a position to determine that Surrey's tax rate had no reasonable rationale, or in the words of the jurisprudence was one no reasonable body informed by these factors could pass.

a) BC Hydro's Response

[177] BC Hydro confirms that it did say to Surrey "there does not appear to be a reasonable rationale for [Surrey's] tax rate increase" and that Surrey failed to engage with BC Hydro's reasonable concerns about the increase. BC Hydro notes Surrey admitted that the purpose of the 41% tax increase was to obtain a larger grant from BC Hydro and to limit increases in other property classes. BC Hydro submits that it was reasonable for it to question the rationale for the rate increase and resist its application, citing *Montréal* at para. 35.

[178] BC Hydro further submits that while it did question the rate's reasonableness, the legitimacy of Surrey's purpose for raising the tax rate is only one factor of its larger rationale, and not what drove the Decisions.

b) Conclusion

[179] While the reasonableness of Surrey's decision to increase the Utilities Class tax rate was the subject of debate between BC Hydro and Surrey, it was not a factor relied on in isolation in BC Hydro's decision. BC Hydro is not judicially reviewing Surrey's tax rates, and this proceeding does not provide the opportunity to do so obliquely. However, BC Hydro is entitled to assess the effect of the tax increase on its own decisions and to communicate and negotiate about that with the municipality. The fact that this discussion occurred and BC Hydro had a view about the reasonableness of the effect of the tax increase does not result in a conclusion that the Decisions were made on an irrational basis.

6. Does BC Hydro's 2022 Justification Apply for 2023 or 2024?

[180] The municipalities argue that even if the justification for the Decisions in 2022 is reasonable, this justification is not available for the Decisions made in 2023 and 2024, because at that time a) the raise in tax rates for 2021 was already known and so was no surprise; and b) the municipalities had tempered their Utilities Class tax rates from the 2021 increase, so the burden on BC Hydro of paying maximum GILT was neither sudden nor as precipitous as it was in the 2022 Decisions.

a) BC Hydro's Response

[181] BC Hydro argues that the broader context remained unchanged after 2022, so the approach in 2023 and 2024 remained reasonable. BC Hydro argued that the tax rate increase was less than 41% but was still 25 or 29% higher respectively than before the increase. BC Hydro further submitted that the broader context underlining the Decisions had not changed and the rationale for the 2022 Decisions applied with equal force in 2023 and 2024.

b) Conclusion

[182] It was not unreasonable for BC Hydro to apply the same rationale to the 2023 and 2024 Decisions as it did for 2022. I accept that the Decisions fell within the range of acceptable approaches available to BC Hydro, given the rationales provided. The petitioners have not demonstrated that, even with the changes to the tax rates that were in place after the 2022 Decisions, the circumstances were so different as to require an adjustment to the approach that I have concluded was available to BC Hydro for 2022. Again, the court's role is not to determine what the best, fairest, most rational, least disruptive approach was. It is to determine whether the petitioners have shown that the one chosen was unreasonable. They have not done so in this case.

D. The Decisions Were Reasonable

[183] Throughout the arguments, the petitioners' central theme was that it was fundamentally unreasonable for BC Hydro to carry out a consistent practice and then suddenly decline to follow it, without precedent and with limited explanation, and that

it was unfair to single Richmond and Surrey out in doing so. On the other hand, BC Hydro argued that it was put in a position to have to respond to rapid and precipitous change because of Richmond and Surrey's tax rises, resulting in an unprecedented cost to the public body. The reality is that both the municipalities and BC Hydro are navigating difficult funding questions, requiring them to respond in a manner consistent with their respective governing mandates. Both the municipalities and BC Hydro are public bodies who are required to attend to the public interest, and there is no doubt this requires navigating tensions in funding.

[184] I find the record reveals that BC Hydro has provided a reasonable justification for the Decisions, through reasons adequately conveyed. The rationales provided to Surrey and Richmond were logical and based in legitimate concerns of BC Hydro.

[185] BC Hydro has provided justification for the departure from prior practice, which was intelligible in its communication and rationale. The explanations were consistent with BC Hydro's mandate, and provided sufficient information to Richmond and Surrey to understand BC Hydro's position on its departure from consistent practice. The explanation provided enough information for Surrey and Richmond to assess whether, in their view, the basis for the reasons was otherwise unreasonable (i.e. in substance): *McHattie* at para. 33.

[186] Considered in light of the factual and legal constraints applicable, the Decisions were reasonable in substance.

VII. REMEDY

[187] The petitions are dismissed.

A. Costs

[188] In this case, I conclude that the petitions raised principled, valid and well-argued concerns and were brought in good faith and in the public interest. On this basis, I exercise my discretion to find that each party will bear its own costs of the judicial review proceedings.

[189] Finally, I wish to sincerely thank each counsel for their capable, effective and well-prepared advocacy including their written materials. The court's difficult task in each case is aided by parties who clearly work together functionally and respectfully while still arguing forcefully for their clients' positions.

"E. Sigurdson J."