

Independent Review of the British Columbia Utilities Commission

Submission of AMPC

General

The remarks of AMPC focus primarily on the need to transparently regulate BC Hydro independently of its shareholder and the concerns that must be addressed when the shareholder happens to be the provincial government.

The physics of electricity generation and delivery, coupled with the essential nature of affordable electric service make it impossible to avoid monopoly elements, and difficult to arrange competitive retail choices. Electric utilities are therefore allowed monopoly franchises in exchange for independent regulation of their facility expansion, expenditures, quality of service and rates.

The mandate of the utility regulator is to balance the interests of the shareholder in earning a fair return on investment with the interests of the customer in receiving reliable service at the least reasonable cost. In achieving this balance, regulators are generally regarded as a proxy for the competitive market that disciplines and rewards the shareholders of other organizations providing goods or services. The franchised utility is freed from the risks of losing revenues to competitors and receives a virtually risk-free return in exchange for submitting to regulatory oversight of its planning, spending and rate setting.

Government Owned and Investor Owned Utilities (IOUs)

Difficulties may arise when the government setting energy policy is also the shareholder of the utility. In these circumstances it is tempting for the utility to believe that it need not be subject to regulation as the shareholder is already imbued with the broader public interest. In some cases this results in bypassing, derogating or removing the independent regulator and managing by close government direction. Once this threshold is crossed the distinction between the government role of setting energy policy, and the utility management role (subject to regulatory approvals) of determining facility needs and timing, necessary expenditures and reasonable rate levels is quickly lost. This unregulated approach risks some of the worst failures of central planning. Ultimately this does not benefit the shareholder, utility or customer who face significant public controversy, poor productivity, and escalating costs respectively.

The difficulties outlined above stem from ignoring the conflict of interest that occurs when a dividend seeking shareholder is able to bypass the regulator and determine its own levels of expenditure, dividends and rate recoveries. A government

shareholder is no less interested in dividends than a private shareholder and is also encumbered with public objectives beyond the electric utility business that distract from strict cost management. A government owned utility must therefore be regulated as thoroughly as any investor owned utility, and perhaps more so when the distractions and impacts on the broader provincial economy are considered.

In BC and neighbouring jurisdictions, independently regulated investor owned utilities have supported government policy and economic development, and have contributed to public welfare as well as government owned utilities. If the government shareholder is unconvinced that independent regulation can best support public policy, a transitional hybrid is possible. Government direction that might previously have been made with little consultation could be subject to public review before implementation. In this way the cost of planning decisions and potential alternatives could be better understood and supported. For instance the total cost (including forecast risks) and benefits of building a long lead-time project like Site C could be better understood relative to an alternative such as short lead-time gas fired generation closer to load centres.

Value of Regulation

When regulation is effective, its benefits (to the customers, to the shareholder and to the economy at large) are often forgotten. It is unfortunate that the benefits can then become more obvious in the breach - some time after public regulation ceases to be effective due to its bypass or removal.

Competitive markets result in efficient resource allocations and provide customers with reliable and affordable products and services. If the market is truly competitive prices are also competitive (and stable) without requiring government intervention, direction or involvement in controversial decisions. Companies that are efficient, innovative and cost effective in meeting customer needs displace those that are not. Competitive companies are rewarded with better dividends, and higher levels of employee morale and satisfaction. Where controversy projects may be involved (such as those raising environmental concerns) the government is distanced from the decision-making by an independent regulator or review body.

Where a competitive market cannot be arranged, the regulator provides the benefits that otherwise would flow from a competitive market. Optimal resource development decisions are rarely made by central planners working in isolation and then presenting a fait accompli to captive customers. Without the economic discipline and diversity of direct competition, better resource development decisions are made through the discipline of refutable evidence that engages the diversity of professionals through independent and transparent regulatory proceedings. It is a rare utility expansion plan that is not improved by testing in front of a competent regulator, and the savings can amount to billions of dollars.

The regulatory process assists the government shareholder in reducing risks and controversy. It is better to know before hundreds of millions have been spent or committed to a plan that there may be a lower cost, better alternative or that the expenditure is premature. Controversial projects are more likely to be supported when the customers have the opportunity to test alternatives through engagement in the regulatory process. When expenditure decisions are made through an open regulatory process it is rarely necessary to spend significant amounts on further engagement, issue management and public relationship exercises.

The regulator provides utility staff and shareholders with essential performance feedback that is not available outside of the competitive market. This leads not only to a more positive utility culture and morale, but also to the natural development of a cost effective organization. Resources that are not efficiently deployed are quickly redeployed when dividends can be affected positively or negatively through the regulatory process. The end result is a more efficient and responsive organization. This is more consistently achieved through the economic incentives and accountabilities of regulation than by the shareholder conducting ad-hoc periodic reviews of the highly specialized areas involved in planning and operating an electric utility. Like other factors listed above, the exact value of these benefits is significant but difficult to measure without special management studies.

Last but not least, public utility regulation is conducted as a quasi-judicial process. As in the full judicial process, there is immeasurable public value added where decision makers are held to account through a fair and reasonable process that operates with nothing hidden, and is based on evidence that is open to testing.

Comments on specific items enumerated in the terms of reference

The terms of reference listed a number of specific areas and AMPC will respond with comments on each using the same nomenclature:

1. Review of comparable regulators in other jurisdictions with key benchmarks.

Based on the views expressed above, AMPC believes that the best working models of regulatory regimes are found in jurisdictions where the most significant utilities are investor owned such as Alberta and California and Arizona.

Although the market structure in Alberta is different to BC in that it has no vertically integrated utilities, the role of the regulator is more demanding and instructive. The Alberta restructuring created a large increase in regulatory demands, and the AUC has developed efficient regulatory procedures that provide an excellent benchmark. For instance, the Alberta provincial

government owned utility (AESO), and municipally owned utilities (Enmax and EPCOR) are regulated no differently than private investor owned utilities such as ATCO and Fortis facing similar risks and returns and similar restraints on planning and expenditures.

2. BCUC process:

a) Existing levy funding and possible alternatives

In AMPC's opinion the levy funding works well and is appropriate. It is a legitimate part of the price paid by the utility for the substantial protection of the monopoly franchise. The cost of regulation is reasonably borne by the regulated utilities. Allocation between utilities on the basis of overall regulated revenues is a proxy for the regulatory effort involved. None of the costs of regulation should be borne by the taxpayer, and the regulator should not be considered part of the public purse or subject to the budgetary influence of the government as a utility shareholder.

b) Timeliness, effectiveness, efficiency and cost of reviews.

Currently, the regulatory process is unsatisfactory in all of these areas, but little blame should be attached to the BCUC or its staff. Given the erosion and gradual removal of its mandate to regulate the plans, needs, expenditures and rate levels of BC Hydro the BCUC is suffering from an existential crisis that has virtually paralyzed it where BC Hydro is involved. Regulation of BC Hydro has been replaced by a series of remarkably detailed regulations and directives. Everything from planning criteria and specific generation facilities down to metering specifications as well as return on equity, revenue requirements by specific account, rate increase levels and certain rate structures and cost allocations have been specified directly by the shareholder. Previous decisions of the BCUC have been overturned, and little scope has been left for the BCUC to influence anything of significance with regard to the planning and operations or costs and rate levels of BC Hydro.

The timeliness, effectiveness, efficiency and cost of regulatory reviews could be greatly improved, but not before the mandate for the BCUC to regulate the substantive decisions of BC Hydro has been restored. With the appropriate mandate and resources the BCUC can then restore the engagement and morale of an augmented level of commissioners and staff to better address the efficiency and timeliness of the process.

c) Standing funding for intervenors.

AMPC considers intervenor funding at realistic market levels to be a vital component of effective regulatory process. The cost of intervention along with the cost of the BCUC itself is appropriately recovered from the regulated utilities, as it is a reasonable part of the cost of the business protection of a monopoly franchise and small compared to the returns to be made.

Without intervenor funding, the level and quality of intervention would be poor and that would deprive the regulatory decision making process of valuable insights from the independent experts that customers would not otherwise be able to bring to the proceeding.

To the extent that regulatory hearings may be replaced or supplemented by other process such as advisory groups, workshops or negotiated settlements it is important that intervenor funding be available to maintain a fully representative level of quality input from utility customer groups.

AMPC understands concerns by some that intervenor funding may encourage increases in the cost or even the length of the hearing process. On the other hand the cost of intervention historically in BC has been small compared to the magnitude of expenditures under review.

A confident regulator is quite capable of managing intervenor costs. The key to managing hearing costs is to consistently limit the scope of intervention to a well-defined purpose and to prevent duplication by multiple intervenor groups repeating positions. In response to a strong regulator that limits scope creep, intervenor groups will consolidate and avoid duplication. The BCUC has effectively managed intervention costs in this manner in previous hearings.

In some jurisdictions publicly appointed advocates may represent smaller diffuse groups of customers as an arm of the regulatory staff or a government entity such as the Utility Consumer Advocate (UCA) in Alberta. AMPC is not supportive of use of a public advocate when the major regulated utility is also government owned and conflict of interest is already a significant issue. Under these circumstances the conflict of interest of a government shareholder is exacerbated by the government controlled office of the advocate, and it would be hard to satisfy smaller customer groups that they are being independently or appropriately represented. Based on the Alberta experience it is also doubtful if the advocate structure reduces overall costs.

AMPC is not unsympathetic with the problems of representing small diffuse customer groups in BC with inadequate funding to effectively intervene (such as BCPIAC). AMPC considers the direct funding of such clearly identified groups from a levy that will allow effective participation without

compromising their independence is preferable to adding additional bureaucracy in the form of an official consumer advocate.

d) Review process including:

i. Conventional oral and written public hearings

Conventional public hearings that are written or oral are central to the transparent, evidentiary review process and must form the core of any regulatory process.

ii. Alternative review processes including expedited hearings and negotiated settlements

The option of negotiated settlements that can avoid a lengthy hearing should always be considered particularly if revenue requirement applications have been frequent. A negotiated settlement is only effective if the default is a full hearing process, as intervenors have no leverage otherwise.

Expedited hearings are not necessary if the core hearing process is effectively and efficiently run in the first place. With the right incentives and standards, there is no fundamental reason why a full and complete hearing process cannot be completed and a decision rendered as quickly as an “expedited” hearing making the latter redundant.

A better alternative to the “expedited” process would be modular approaches where elements of a full hearing process can be separated into more manageable “chunks” that can be run in quick succession or in parallel by a well resourced BCUC. The upcoming BC Hydro RDA offers such an opportunity.

Establishing standards and pro-forma as well as familiarity with a stable and repeatable regulatory process will improve the pace, efficiency and cost effectiveness of the regulatory process over time. In the longer run some forms of enhanced incentive or “price-cap” regulation may also be worth exploring as a potential improvement in regulatory efficiency, but we first need a sound and comprehensive process as a base-line, and that is not yet in place.

iii. Involvement of the BCUC in alternative processes

It is helpful to have BCUC staff present at workshops and negotiated settlements to keep a record of the views expressed and expedite any remaining process. In some circumstances BCUC staff may be able to effectively resolve disputes and reduce the length of the total process.

iv. Generic proceedings on specific issues

Generic hearings are useful where the issue is applicable to all utilities such as GCOC or MRS. For an effective hearing process, the BCUC needs to be confident that the government will not override or bypass the final decision. As an example, confusion between the government's extended role and the severely reduced role of the BCUC contributed to simple MRS decisions that could have been concluded within two or three months taking well over a year.

v. Opportunities for more efficient and focused hearings.

Please see AMPC responses to 2.b, 2.c and 2.d.ii above.

vi. Use of guidelines and policies.

Guidelines and procedures are an important part of managing an effective process. Please see AMPC response to 2.d.ii above.

vii. Timelines for reviews and decisions.

Adopting timelines for completing reviews and rendering decisions after completion of the evidentiary phase provides a metric for BCUC performance and would assist in improving the timeliness of decisions. Some flexibility should be available to account for the complexity and frequency or relative simplicity of some decisions. Alberta has set some useful benchmarks in this area.

viii. Coordinated regulatory processes

Proceedings should be coordinated where possible. RDAs should normally follow RRAs, these in turn would rationally follow IRP and major needs approvals. Generic hearings are a form of coordination

and could possibly include coordinated revenue requirement hearings of multiple utilities. Coordination would be served if large facilities did not seek environmental approvals before their need, cost effectiveness and timing has been determined by the regulator.

3. *Structure, resource needs and performance of the BCUC:*

a) *Stakeholder representation models in other jurisdictions (with role of staff).*

Please see AMPC comments in response to 2.c

b) *Recruitment, retention, compensation and staffing levels for Commissioners and staff.*

These items are best left to comparisons with other jurisdictions where the dominant utilities are investor owned. To attract and retain quality staff the regulator is handicapped if the pay scales are not comparable with the middle management ranges of the utilities regulated. Commission compensation should be similarly comparable to the executive levels of the utilities regulated. Regardless of compensation levels, recruitment, retention and motivation of BCUC staff remains critically dependent on restoring the mandate and potency of the BCUC in regulating the plans, expenditures, rates and service levels of BC Hydro.

c) *Organizational structure of the BCUC including:*

i. *Vice-Chair and Executive Director positions.*

In terms of specific organizational structure and job titles, AMPC defers to the Chair of the BCUC

ii. *Full-time and Part-Time Commissioners*

The capability of the BCUC can be usefully extended through part-time Commissioners. The precise number of full and part time Commissioners would depend on the exact mandate and workload of a restored mandate, but it is hard to envisage the work of the BCUC being accomplished with less than 5 full time and 5 part-time positions backed by a staff of at least 50 full time professionals with provision for another further temporary contract staff or consultants.

iii. *Experience and knowledge*

BCUC Commissioners and staff would ideally be very familiar with the utility businesses that they regulate. Engineering, accounting, law, business and economics should be represented in the backgrounds of Commissioners and staff alike. Ideally the backgrounds of both Commissioners and senior staff would include extensive experience working for a regulated electric or gas utility (both investor and government owned).

iv. *Regulatory process and utility expertise*

Please see AMPC comments in iii above

v. *Use of internal or external counsel*

Both models work, and so does a hybrid approach when hearings peak, as sometimes used by the regulated utilities themselves. The current legal council for the BCUC has done a creditable job. As with other staff they have been limited by the restrictive mandate and lack of resources.

d) *Efficiency, effectiveness and performance measures including:*

i. *Identify performance metrics*

This question requires a great deal of thought. AMPC has described the value and benefits of full and effective regulation in the general section of our comments. The most valuable change that can be made in the interests of the provincial economy is to restore the mandate of the BCUC to fully regulate BC Hydro. Many significant improvements will follow from this critical change as described above.

As in many performance metrics the most valuable aspects of job performance are often the hardest to measure, and the easiest to measure are less important. For instance it may be tempting to consider the reduction in a revenue requirement application as a result of a regulatory decision. This metric does not come close to measuring the value of regulation as described earlier, and tends to devolve into a forecast game between utility shareholder and intervenors that obscures the real value of the regulator. It could even be argued that the performance metric should be the opposite: how

close the utility application is to the regulator's decision, as this would indicate that the utility has responded to the presence of effective regulation by scaling down its forecasts.

Other metrics that might be considered would be overall budget control compared to number and type of decisions, timeliness of decisions, lack of public controversy, lack of appeals or reconsiderations, satisfaction surveys of regulated utilities and intervenors, and responsiveness to customer complaints.

ii. Identify operational impediments.

Please see AMPC's comments response to 2.b above.

iii. Identify specific opportunities for improvement.

Please see AMPC's response to 2.b above.

4. Identify any other matters considered important.

Please consider revisiting the need and timing of Site C and other generation as part of a comprehensive review of the IRP by a revitalized and independent BCUC.