

# **Independent review of the British Columbia Utilities Commission (BCUC)**

## **Second submission of the Association of Major power Customers (AMPC)**

**August 15<sup>th</sup> 2014**

### **1. Introduction**

AMPC has already expressed its views on an appropriate regulatory model for BC Hydro and regulatory process concerns in its earlier submission. In this submission AMPC will address further specific questions raised by the Minister and by the review panel itself with respect to some specific effects of public ownership.

AMPC will also respond briefly to some comments on its own previous submission raised in submissions of other parties, though the silence of AMPC on issues raised by others does not necessarily indicate agreement.

AMPC will begin this final submission by considering the sequence of reviews that has led to this review of the regulatory model in BC and in particular the aspects of that model that apply to BC Hydro. Three years of reviews by a number of government appointed bodies have identified one of the root causes of BC Hydro rate increases and service shortcomings as problems with the governance model.

The Minister has asked the most important question of how a major provincial utility can best be regulated when the shareholder is also the government responsible for overall energy policy and regulation. Advice on this question and its important corollaries is offered in sections 6 and 7 this submission.

### **2. Views of the IEPR on regulation with public ownership**

In the last three years, a number of government appointed panels have studied the sources of extraordinary levels of escalation of BC Hydro rates, the most recent being the Industrial Electricity Policy Review Panel (IEPR). Each of these reports noted deficiencies in the regulatory model and has led via carefully considered recommendations to this independent review focused on improving the regulation of BC Hydro by the BCUC.

In its October 2013 report the IEPR made the following observations on the role of the BCUC and utility commissions in general:

“A significant energy policy decision of the 1980 Energy Plan was to place BC Hydro under full British Columbia Utilities Commission (Commission) regulation. The *Utilities Commission Act*, and similar provincial and state legislation, delegates powers to energy regulatory tribunals, following the “regulatory compact”. In exchange for an exclusive right to serve a defined area:

- A regulated utility must provide safe, reliable, non-discriminatory service to its ratepayers at rates that are based on costs; and
- the regulator must allow the regulated utility an opportunity to earn a fair return on its invested capital.

Tribunals make decisions based on evidence, and abide by standards of procedural fairness. Significant decisions are based on open hearings with interveners offering testimony. A tribunal's role in providing openness and transparency in its reviews of utility applications also helps remove perceptions of political interference from controversial decisions.”

(IEPR final report section 4.1 “The role of Utility Commissions”)

The IEPR report then made the following observations on the corresponding role of government and the problems that arise when the government setting policy and holding the legislative pen is also the utility shareholder:

“Provincial governments have overall responsibility for electricity and energy policy. As with most provinces and territories, British Columbia periodically prepares Energy Plans that reflect governments' vision for the future of its energy sector and its contribution to provincial prosperity. Provincial Energy Plans from 1980, 1990, 1994, 2002, and 2007 contain common themes of energy security, economic development, environmental sustainability, clean energy, and energy efficiency. These plans were prepared with varying degrees of input from the public, stakeholders, and advisory groups...

In British Columbia, the Government has the ability to displace BC Hydro's and the Commission's discretion on matters through directives, directions, exemptions, and regulations under several sections of at least four Acts. Government's use of its regulatory powers has increased over time. There have been 87 BC Hydro-related regulatory directives since 1980. Almost one third of them were issued since 2010, as the Clean Energy Act created a number of enabling powers that were exercised by regulation. Many have had the effect of imposing costs onto BC Hydro ratepayers.

The number and range of government policy instruments has impacted the effective regulation of BC Hydro in three ways:

1. There can be considerable confusion over their interpretation. The policy decision to phase out Burrard Thermal is the subject of five separate enactments; another example was the prolonged debate over the scope of the Dawson Creek/Chetwynd Area Transmission Reinforcement Project proceeding.
2. The use of directives and legislation to determine energy resource and technology choices means decisions may not be supported with the information that would normally accompany an evidence-based process. This creates a risk that a growing portion of BC Hydro's revenue requirements is no longer based on least cost planning.

3. As BC Hydro's shareholder, the government has the ability to insulate itself from risks that shareholders of an investor owned utility would bear, and also transfer costs from the taxpayer to the ratepayer. For example, a 2009 Order (OIC 205) directed the Commission to establish a regulatory account to recover the costs of the Government-imposed Tsawwassen home purchase program arising from the Vancouver Island Transmission Reinforcement Project."

(IEPR Final Report section 4.2 "The Role of Government")

The IEPR accordingly recommended that the regulatory compact be safeguarded from the deleterious effects of bypass with *additional* principles when the government policy maker is also the regulated utility shareholder:

"Government should adopt four additional principles beyond the "regulatory compact" –which allows a utility to earn a fair return on its investment in exchange for providing safe, reliable service at rates based on costs – in any decision-making process involving electricity policy. Our expanded compact includes the following principles:

- **Clearly Articulated Policy:** Government should determine the provincial public interest and set clear, understandable policy objectives, and apply them consistently to all utilities;
- **Allocating Risk:** Utility owners (including the Province) make decisions based on an evaluation of risks, and the costs and benefits associated with these risks should be allocated to the party taking the risk;
- **Market Based Solutions:** Market based solutions are generally preferable to those imposed by Government, provided externalities are priced and predictable, because they send appropriate price signals to drive decision-making and behaviour; and
- **Public Scrutiny of Costs and Benefits:** Ratepayers should be provided with an opportunity for public review, either by the Commission or government, of any policy-driven initiatives that could significantly increase costs before these are implemented."

(IEPR Final Report section 4.3 "Additions to the Regulatory Compact")

The three regulatory failures identified and enumerated by the IEPR in section 4.2 of their final report can be further explained as follows:

1. Failure to distinguish between the overall policy setting role of the government (that is balanced by transparent debate in the legislature), and the decision-making and implementation role of the utility (that is balanced by a transparent regulatory process).

As the IEPR noted, this can lead to costly confusion and sub-optimal planning when broad energy policy issues such as maintaining security of supply,

supporting economic development, and environmental sustainability are confused with their corresponding detailed management decisions: changes to technical planning criteria on supply security, interpretation of tariff contribution policies that influence economic development, and the conflation of desired environmental targets with economic goals.

Confusion and excess costs are avoided when government makes the broad policy decisions through legislation, and the corresponding technical utility decisions are left to utility management - subject only to regulatory approval.

2. Failure to use a transparent evidence-based process where the claimed benefits and costs of major utility plans and expenditures can be tested updated and verified.

The economics of electric utility decisions are complex and often depend on uncertain and volatile circumstances. The omission of an evidence-based evaluation process virtually guarantees that detailed plans directed and fixed in legislation or directives will not represent the least cost expansion plan when it is realized some years later. The omission of a transparent process will also ensure that the projects concerned will be marked by persistent controversy. Business cases publicly tested *before* expenditures are made or committed are essential if accountability and cost effectiveness at BC Hydro is to be maintained.

3. Failure to allocate risks appropriately or to make the shareholder accountable for the cost of decisions it makes.

This is a cardinal error if cost effective decision-making is required. Once the shareholder is insulated from the risks of poor decisions there is no longer an incentive to make good ones. This approach undermines and ultimately destroys the regulatory compact.

### **3. What the IEPR recommendations mean for the regulatory model**

It is widely understood and accepted that many of the problems identified by the IEPR with the regulation of BC Hydro do not occur with investor owned utilities (IOUs). Where the ownership of the utility is separate and distinct from the government policy maker, there is no conflict of interest and the three corresponding failures of the regulatory or governance model do not occur:

1. The policy-setting role of government is distinct from the management of the utility due to clear separation of ownership. Ministers and government staff involved in energy policy development are not tempted to become involved

in the detailed decision-making and acquisition or expansion plans of IOUs. Nor would the Ministry of Energy and Mines rely on the management and staff of privately owned utilities to be their sole source of technical information and policy support.

2. No IOU plans for expenditures would be allowed without an evidence-based review and open testing of claimed benefits and costs. Not least because the expenditures of regulated utilities automatically increase the shareholder's ratebase and revenues regardless of the actual benefits to customers served.
3. It is universally accepted that the shareholder of a utility (or any business) must accept the risk of and be accountable for its own decisions. The proposition that an IOU shareholder be allowed to transfer any costs from other areas of business, or transfer the costs and risks of its own decisions and outcomes to ratepayers (or taxpayers) would not even arise.

This is why AMPC has consistently taken the position through the last three years of reviews that the best regulatory model would be to regulate BC Hydro no differently and with no more instances of regulatory bypass and "policy direction" than an IOU, as appears to have been the government's intent in 1980 when BC Hydro was first made subject to BCUC regulation.

AMPC takes no position on the desirability of public or private ownership of public utilities. Both ownership structures can deliver all of the desired public policy objectives if and only if:

- Government policy objectives are clearly legislated and separated from utility management and regulatory issues,
- Evidence-based testing of the claimed benefits and costs of all significant plans and expenditures are transparently conducted, and
- The shareholder is held accountable for the risks of its decisions, and not allowed to transfer them to existing or future ratepayers.

As the necessary regulatory model is already in place to achieve these same conditions for IOUs, then the most cost effective and least duplicative approach would be to adequately resource and mandate the BCUC to effectively regulate BC Hydro in the same manner that it regulates IOUs such as Fortis and without discrimination or differences by ownership structure.

The IEPR panel final report suggested four important additions to the regulatory compact when considering policy direction in the context of a government owned utility such as BC Hydro. AMPC agrees that these additions are necessary to ensure that the regulatory compact is not compromised by the conflict of interest that

arises when the shareholder seeking dividends also has the power to direct both the utility and the regulator. For clarity AMPC understands these additions to mean:

·**Clearly Articulated Policy:** Government policy is clearly articulated and applicable to all utilities and similar businesses (such as those owning generation facilities) in the province and does not apply directives to BC Hydro only. This would assist in maintaining a clear distinction between the role of policy development and the separate role and responsibility of utility management and regulation.

·**Allocating Risk:** Utility owners (including the Province) make decisions based on an evaluation of risks, and the costs and benefits associated with these risks should be allocated to the party taking the risk. For example, the risks of a decision made by the shareholder would be borne by the shareholder and not transferred to ratepayers. The returns and dividends expected by the shareholder are a reward for and reflect the level of the risks taken. (Section 7 of this submission explains how regulation of a government owned utility based on a forecast test period also protects the taxpayer from transfers of risks).

·**Market Based Solutions:** Market based solutions are generally preferable to those imposed by Government, provided externalities are explicitly and predictably priced, because they provide price signals that allow efficient decision-making. BC Hydro has a monopoly franchise where government policy has ruled out market-based solutions at the retail level. This leaves only the supply side of BC Hydro for market-based solutions to be applied. In this regard externalities are already predictably priced by taxation and environmental regulations. Further limitation of utility planning choices by specific legislation represents a departure from the policy making level that becomes an incursion into complex areas of utility and regulatory management that may well have unintended consequences.

The economic impacts of any legislation affecting utility supply and planning decisions must be openly determined so that citizens and ratepayers have visibility of the costs and benefits of various policy decisions, e.g., gas-fired generation as an alternative to large Hydro or IPP and corresponding transmission developments.

·**Public Scrutiny of Costs and Benefits:** Ratepayers should be provided with an opportunity for public review, either by the Commission or government, of any policy-driven initiatives that could significantly increase costs *before* these initiatives are implemented.

The IEPR recommendations are clear that the appropriate risk allocations must be retained regardless of the type of ownership, and that a government shareholder not be allowed to transfer risks to ratepayers that a private shareholder would ordinarily bear.

One way that this accountability could be preserved would be for the government shareholder to provide evidence of the costs and benefits of a planned expenditure

or significant commitment to an initiative, subject to cross-examination on the evidence and ongoing cost -measurement and validation. This could be before the BCUC as per normal regulatory process or before a separate transparent, evidence-based testing authority. In either case the public process is necessary to ensure that the ratepayer would not be subject to higher costs than necessary.

In all of this it is important to understand that one purpose of economic regulation is to determine what costs the utility ratepayer has to bear without unnecessarily restricting the utility management. Ideally the utility shareholder may still proceed with projects that are more expensive and serve some purpose other than electric service, as long as these are at the shareholder's expense and the ratepayer is not burdened with the additional costs.

A further difference that may be appropriate is for the policy maker to appear before the BCUC in order to clarify the intent of government policy – as distinct from the utility's decisions on how to implement that policy. Such an approach may assist in maintaining a clear distinction between policy matters determined by government and decisions made by utility management subject to regulation.

## **5. A recent example of failure of the regulatory compact**

Mandatory Reliability Standards (MRS) provides an example where the failure to distinguish between broad energy policy and detailed utility management resulted in significant confusion, wasteful process, excessive costs for customers, poor customer service and potential degradation of reliability.

MRS with large fines for non-compliance are imposed on interconnected utilities in the Pacific North-West, including BC and Alberta, by the Western Electricity Coordinating Council (WECC) based in Salt Lake City, Utah. Many of the MRS technical standards and reporting procedures are intended to apply to the utilities that own and operate transmission facilities. Cautious U.S. legal language defining MRS responsibilities designed to capture segmented utilities in competitive retail markets is open to interpretation that onerous technical standards and fines could be applied to end-use customers served at transmission voltage. The absence of an effective regulatory model and the entry of policy makers into technical management details without adequate advice led to significant confusion and concerns surrounding the implementation of MRS in BC.

Unnecessary cost burdens on transmission level customers and ineffective but lengthy process was experienced before the MRS issue was resolved externally through a change in the bulk transmission system definition made by the WECC itself. Customers are still waiting for this potential resolution to be adopted and implemented in BC.

Other jurisdictions with clear distinctions between policy and utility regulation made provision for the utility with responsibility for transmission reliability to accept the MRS responsibilities. These jurisdictions did not interpret customers as being responsible or leave them exposed to MRS penalties, regardless of the utility structure or type of ownership. In Alberta, transmission MRS responsibility was fully accepted by the AESO, a government owned and regulated utility equivalent to the transmission planning and operating arm of BC Hydro.

The only *policy* decision necessary to resolve MRS is to make security of supply, and cost-effective customer service a priority of every regulated utility, including BC Hydro through forward test period regulation. Normal regulatory incentives could then have been expected to ensure that the party with the appropriate technical expertise to deal with MRS reporting requirements (BC Hydro) would assume responsibility, relieve customers of the burden and seek the appropriate minor increase in forecast revenue requirement.

BC Hydro did not accept MRS responsibility, as it perceived the MRS responsibilities to represent an incremental cost with no potential reward. Having little exposure to normal regulation, BC Hydro was not subject to the economic incentives that would have rewarded its shareholder for good customer service or vice versa.

BC Hydro's reaction to MRS is an example of a culture that develops when normal regulatory incentives to assign risks and rewards to the party best able to manage them are bypassed. The confusion over who should have been made responsible was exacerbated by an inability to distinguish between a government policy decision (provide security of supply) and the management/regulatory decisions (interpretations of technical and inter-utility agreement details) intended to implement policy in general at the utility level.

## **6. Questions raised in Minister's letter to the task force**

In his letter to the task force dated July 15<sup>th</sup>, Minister Bennett invited comments on a number of issues beyond the original Terms of Reference including:

*"Whether a different a different regulatory model for Crown Corporations should apply as compared to investor-owned utilities"*

In the preceding sections, AMPC has explained why we believe that the ideal regulatory model would be exactly the same for both government-owned and investor-owned utilities. Almost all of the current difficulties experienced by BC Hydro, its shareholder and its customers arise from the fact that BC Hydro is *not* regulated in a manner comparable to an IOU. The neglected infrastructure needs,



inability to plan effectively for future growth, steady stream of large rate increases and loss of competitiveness all stem from the fact that BC Hydro has effectively operated as an unregulated monopoly through bypass for many years.

The related question of:

*“Mechanisms for government to provide clear and timely policy directions”,*

should not be a challenge in an environment where government policy is more clearly separated from the more specific utility management and regulatory roles. If legislation remains at a policy level and does not become clouded by detailed technical and accounting specifications, little further policy direction is necessary. To the extent that some policy clarification may be necessary, the associated Ministry staff or consultants could present evidence at the appropriate regulatory hearing. In particular ex-ante business cases could be presented and defended if facility level, or similarly specific directions are contemplated.

Clear legislation of broad policy intent is sufficient to produce the desired results as long as the legislation, regulations and special directions do not stray into detailed sub-policy areas. Recondite technical areas such planning criteria, reliability, specifications of utility equipment, specific facility selection and timing, competitive procurement rules, regulatory accounting, cost allocation and rate design are better managed by specialists within the utility and regulator, and by specialized consultants representing customer’s needs for service levels and costs through the regulatory process. Overly specific legislation compounds the difficulties, as it is insufficiently flexible to address rapidly changing economic, market and technical circumstances. Further legislative intrusions are inevitably required to correct errors and remedy unintended consequences that arise from an incomplete understanding of the technicalities, customer needs and changing conditions.

Should the Minister have any remaining concerns about high-level policy being properly interpreted or implemented by the regulator there is always the option of Ministry staff or consultants participating in the BCUC hearing process to provide clarifications and updates on policy developments and interpretations. Stable policy with little in the way of interpretation requirements is achieved by defining broad objectives, avoiding over-specification at the technical level, and being prepared to amend legislation in the face of changed circumstances such as the flux of market prices, new technology and resource opportunities.

The Clean Energy Act and associated regulations is an example of overly specific legislation that has had unintended consequences requiring significant interpretation as a result. The Minister would likely not need significant guidance on:

*“ The appropriate application of the objectives in the Clean Energy Act”,*

If the Act did not include inflexible and specific language in fixing targets that are the result of complex factors normally determined case-by-case basis by expert opinion (e.g. determination of planning reserve sources and 67% conservation and 93% clean requirements). These inflexible goals conflict with today's imperatives to limit rate increases and support economic development of resources such as mining and natural-gas export. A high level objective of encouraging economic conservation under industry standard reliability planning and a target for incremental renewable energy portfolio by installed capacity ratios would have been sufficient to meet public policy objectives under an effective BCUC with a restored mandate. It was not necessary and it is inherently risky to specify such detailed matters that are better left to determination through a more flexible regulatory process.

The Minister requested further advice on:

*“The potential efficiencies that could be gained from BCUC regulation of private sector water utilities”.*

Electricity, gas, combined heat and power, and water utilities are similar monopoly “pipe and wire” linear capital-intensive businesses most efficiently regulated by a single commission such as the BCUC.

In the case of the BCUC regulated entities, the ICBC is an anomaly. ICBC's business characteristics are unlike any electric, gas or water utility monopoly. ICBC is an insurance monopoly created by statute where a competitive market could have been arranged as an alternative. ICBC has more in common with market based insurance and financial organizations than linear monopoly utilities. Efficiency considerations suggest a different regulatory approach and different regulator than the BCUC, which is more efficiently geared to regulate natural monopoly “pipe and wire” linear utility services.

AMPC agrees with Jim Quail that BC Ferries has more in common with regulated monopoly utilities (e.g. linear nature, natural monopoly, capital intensity, real time service, capacity planning and physical reliability considerations) than ICBC. Ferry regulation by BCUC would better fit the venerable tradition of monopoly regulation that started with linear, capital intensive railroad, pipe and wire companies.

AMPC appreciates that the Minister has diligently followed the issues explored by this task force to the extent that of raising further issues of significance in his recent letter and hopes our feedback is accepted in the constructive spirit it is intended.

## 7. Questions of regulation raised by the Review Panel

The Review Panel asked two key questions relating to possible differences in regulatory approach between government owned and investor owned utilities (IOUs) and the likely outcomes. AMPC feels it is important to respond in writing to these questions, as they relate to widely held misperceptions around the effect of economic regulation of utilities that have previously been used to support the inappropriate bypass of the regulator of BC hydro.

Before answering the specific questions it is helpful to consider why government might own an electric utility, and the conflict of interest that arises from this ownership and governance structure. The *raison d'être* of government ownership is that the economic resources, legislative authority and taxation power of a province or an entire nation may be required to finance large civil projects with broad public policy objectives beyond economic electricity supply - such as flood control. These projects otherwise may have been considered too large and too risky for private investors.

BC Hydro was created from the privately owned BC Electric in order to build the Columbia River dams and capitalize on the international Columbia River Treaty (CRT) of managed river systems in the Pacific North-West. Similar public entities were created in Canada, the US and elsewhere (e.g. Ontario Hydro, Bonneville Power Administration, and Tennessee Valley Authority) to make significant investments in hydraulic generation where the capital requirements were too high, the returns too distant, and public concern too great for the appetite of private investors at that time.

However well intended, a conflict of interest arises when the legislator and policy maker becomes the utility shareholder and seeks dividends from the enterprise. Once a government owned utility is established the single shareholder is constantly tempted to bypass, diminish or remove the independent regulator for short-term gains. These gains may be monetary (such as dividends to balance the budget) or political whereby favoured projects and policies can escape public scrutiny of costs and benefits and not appear as a cost to the taxpayer (or even the ratepayer in the short term). Political gains include the suppression of rate increases prior to an election by deferrals that will increase future rates and have the longer-term effect of discouraging efficient decision making within the utility.

The long-term success of the initial project that necessitated government ownership is sometimes used to suggest that a government owned utility now pursuing more typical utility projects need not be fully regulated, as it has been motivated by altruism rather than the gains outlined above. The success of the initial projects that required government ownership may be appreciated, but it has no relevance to the

planning and management decisions of a utility 50 years later when different economic, physical, technical, market and social circumstances apply.

**Q1.** If a significant portion of BC Hydro's revenue requirement were found to be imprudent and disallowed by an independent BCUC, wouldn't the government suffer a budget imbalance and need to recover the disallowed costs through increased taxation? (Economic regulation and shareholder accountability at BC Hydro has often been argued as pointless, because the taxpayer must make up the shortfall in revenues that would result from expenditures deemed imprudent in a given year).

**A1.** No. This implied argument against the economic regulation of BC Hydro is premised on a misinterpretation of how prospective test-year regulation works. Fully regulated investor owned utilities (IOUs) manage the risk of disallowance by refraining from making major investments *before* the regulator approves them in the next test period revenue requirement. In other words, regulation ensures the timely production and testing of ex-ante business cases.

Instead of periodic Ministerial reviews and interventions in the inexorable rise of BC Hydro's rates, all that is necessary is to revert to full prospective regulation and allow it to work without constant government direction. If the shareholder were subject to the risk of disallowance, accountability would be transformed throughout the organization and no expenditures would be contemplated without a sound ex-ante business case that could be publicly examined and supported. There would then be little risk of a disallowance causing a budget shortfall or taxpayer burden.

**Q2.** Is a reduced or different regulatory approach necessary to support certain public interest projects such as electrification of remote areas, conservation incentives, or clean energy development that could not be achieved by fully regulated (investor owned) utilities? (It has sometimes been suggested that certain developments in the public interest such as a long radial transmission line could not be developed without government direction or intervention).

**A2.** No, special regulatory approaches are not necessary if the over-arching policy is sound. *Public ownership* may facilitate major public interest civil works such as managing river systems for flood control and electricity generation, but this should not be conflated with the effect of *public regulation* on programs deemed to be in the public interest. Regulation of monopoly utilities, regardless of ownership structure is always in the public interest as defined by the electricity policy.

The only effect of diminishing or bypassing regulation for a government owned utility is that important details on selected shareholder projects and programs become obscured from public view. These projects then do not receive effective scrutiny of the costs and benefits, or even tests of consistency with government

policy as defined in existing legislation. Bypassing or re-directing the regulator also allows for discriminatory treatment of certain customers and groups.

It is an error to conclude that full economic regulation of BC Hydro would inhibit public interest developments as has sometimes been suggested. This error arises from conflating the role of the policy maker with the role of the regulator. The fallacy that regulation is an impediment to the implementation of good public policy is best illustrated by examples where this is clearly not the case:

- a) There has been no suggestion that the authority of BCUC to regulate Fortis (gas and electric) in key areas such as facility needs and planning, capital structure and return on capital, revenue requirement, or rate design needs to be diminished or relaxed. Nor has there been any suggestion that the full and independent regulation of Fortis has been an impediment to desired public policy outcomes in the service areas of Fortis. Hypothetically, if BC Hydro were to be sold to Fortis, there would be no suggestion that regulation of the new entity should be diminished or relaxed in order to give effect to any desired public policy.
- b) Due to a past government policy of discouraging radial expansion to support large and remote resource development in favour of conservation and smaller developments within the existing network, there was doubt that the BCUC would approve the need for the Northwest Transmission Line (NTL) extension to serve mining loads in areas of BC remote from the lower mainland. Following previous government policy and direction, BC Hydro had proposed and the BCUC approved narrow economic approaches to transmission development whereby radial transmission lines to serve major loads were effectively discouraged. In this instance the regulator could not be faulted for implementing government policy that was unsympathetic to large or remote resource developments.

There could have been near certainty of a regulatory approval for the NTL, and more attractive costs for the customers served by it had the relevant energy policy been updated to explicitly support resource developments through the orderly and economic development of the transmission system. There would then have been no need to write specific legislation taking such decisions (and many related decisions such as complex planning criteria) out of the hands of the utility and regulator. Two wrongs did not make a right in this instance and served only to cause unnecessary controversy, disturb postage stamp rates and contribution policy, and increase the risk of transmission cost overruns – which have now been realized for the NTL.

In other resource driven jurisdictions such as Alberta, government policy supporting orderly economic development of resource industries *and* comprehensive regulation of utilities has resulted in the approval and construction of many radial transmission lines to open remote resource

areas and support large process loads. This did not require government intervention or direction.

Part of successful resource developments such as radial transmission extensions are reliable decisions (not easily subject to government bypass) of an independent regulator who remains clear that the utility must provide reliable service to all who request it; has the mandate to approve planning criteria; ensures that the cost of extensions are shared between new and existing customers of all classes (as everyone benefits from the economic developments); and maintains incentives for the utility to remain within reasonable budgets.

Many other public advocacy issues such as conservation or clean energy targets deemed to be in the public interest are readily defined in high level policy legislation that describes the desired result in terms of standards or portfolios, and then leaves detailed implementation to the utility and regulator.

It is not necessary to override the regulator, issue specific directions or descend into arcane utility planning details in order to address the concerns of special interest groups or affect the balance of various environmental and economic interests. Such controversies and decisions are best left to a well-informed and well-resourced regulator who is prepared to explain decisions and answer any appeals. It can be helpful for the Ministry to intervene in proceedings in order to clarify the intent of legislation where there might otherwise be some confusion. Well-drafted legislation should not require a great deal of clarification however, and the government may be better served by letting the regulator deal with more controversial decisions.

## **8. Reply to the submissions of other participants**

Unsurprisingly AMPC finds itself largely in agreement with other ratepayer groups on the need to effectively regulate BC Hydro with a commensurate need to better resource and focus the BCUC on fully regulating all monopoly electric and gas utilities on the same basis.

AMPC agrees that funding for intervention by all ratepayer groups is vital to address the imbalance of resources and information that always favours the regulated utility, and disagrees with those that suggest the need for funding intervention by industrial customers is any less than that of other ratepayer groups.

Industrial customers are not necessarily any better resourced to fund interventions than groups of smaller customers and special interest groups. It should also be taken into account that with the exception of a rate design hearing, industrial customer interventions are as helpful to other ratepayer classes as they are to

industrial customers. It is in recognition of such benefits that common positions between industrial and other ratepayer groups are often agreed to save time and money in hearings.

AMPC shares the concerns of all other intervenor groups with the concept of a consumer advocate, particularly when the utility and the advocate are effectively arms of the same government.

AMPC feels it is necessary to respond to some comments made by BC Hydro and Fortis in their second submissions as they seem to have misinterpreted AMPC's position in some areas or have omitted important considerations in their comments on managing the regulatory process and the volume of information requests.

In section 3.2 of their second round submission BC Hydro notes the general agreement among seasoned participants, including AMPC, on the need to control the scope of regulatory proceedings, retain a strong focus on the significant issues and avoid duplication. Fortis also made similar comments. There appears to be agreement that significant time-consuming volumes of information of little use or relevance could be eliminated and improve the efficiency of most hearings. Some of this information overload that chokes the regulatory process tends also to obscure more relevant and important information. BC Hydro and Fortis mention in particular the number of information requests (IRs) that have greatly increased in volume in recent hearings and offers reasons as to what may be driving the high volumes.

AMPC is not without sympathy for concerns over the volume of materials that must be handled in a regulatory hearing, the tendency for large portions of the material to be of little relevance, and for more significant details to be obscured or missing. Some of the reasons that BC Hydro suggests may drive the increased volume of IRs are plausible, but what is striking is the omission of what AMPC believes to be the main driver of IR volumes: the rapidly increasing volume of utility filing materials themselves.

It is common in regulatory proceedings for utilities to file large volumes of materials that deplete the analytical resources of intervenors and poorly resourced regulators alike. The utility can call upon scores of well-paid internal resources, lawyers and consultants. Intervenors are lucky to be able to afford a single consultant and lawyer. This unequal war of attrition is advantageous to any large utility and requires a firm regulatory response to manage it. Combined with constant utility reorganizations and changes in accounting procedures the growing volume of materials filed by utilities consumes scarce intervenor resources diving into the sea of words and numbers to find the relevant drops of information. It is hardly surprising if hard-pressed regulators and intervenors respond to the tactic of drowning by volume by asking more IRs to restate and explain information that might expose the more important issues.

The solution may be for the regulator to insist on standards and content of filing applications and uniform accounting procedures that present the relevant information clearly and assist in developing continuity schedules, comparisons and restatements of key activities across reasonable timeframes. One relevant metric of regulatory performance could be to cut the volume of utility application materials by 50% through standardization and elimination of irrelevant information with insistence on direct and plain language that remains focused on the scope of the proceeding and provides useful illumination.

In section 4.1 BC Hydro agrees with AMPC that jurisdictions such as Alberta California and Arizona are relevant (for instance in setting standard timeframes and accounting procedures for proceedings) and then doubts if these jurisdictions offer the “best working models across the board”. Fortis similarly warns against such comparisons pointing out that each jurisdiction is unique with different utility structures and market arrangements etc. AMPC understands that each jurisdiction is unique and would like to clarify that it suggested jurisdictions with investor-owned utilities as being more transparent and thereby better models for comparison, rather than being the “best working models across the board”. For reasons explained in the first section of this submission, the regulation of government owned utilities tends to be less transparent and therefore less useful for comparison purposes when considering a regulatory model.

In section 4.5 BC Hydro cautions against the Task Force recommending a certain level of BCUC staffing, such as AMPC’s opinion that “it is hard to envision the work of the BCUC being accomplished with less than ... 50 full time professionals”. Fortis also treated AMPC’s remarks as a specific recommendation. AMPC agrees with Fortis that the quality of staff is more important than the quantity and would like to clarify that it was not recommending any particular staffing level or any particular organization for the regulator. Rather AMPC was simply indicating that the resources required for a competent regulator of major utilities such as BC Hydro and Fortis are not trivial, either in terms of quality or numbers – especially if the types of utilities regulated are to include other linear monopolies such as district combined power and heating schemes, water utilities and ferry services.



