29 October 2014

BCUC Review Task Force
Attn: Peter Ostergaard, Chair
by email: bcucreview@gov.bc.ca

Dear Mr. Ostergaard and Members of the Task Force,

Re: Independent Review of the British Columbia Utilities Commission
Comments of the BC Sustainable Energy Association and the Sierra Club of BC

The BC Sustainable Energy Association (BCSEA) and the Sierra Club BC (SCBC) have the following comments on two aspects of the Task Force's 1 October 2014 Interim Report.

1. Government's role to set energy policies

We support the principle that the role of government is to set energy policies and convey them to the Commission. We agree with the Interim Report where it states:

> "It is the sole prerogative of governments to set energy policies and then convey them to their utility regulators clearly and effectively. Governments may do this through legislation, regulations, directions, and directives, as well as softer policy statements in strategic plans. All of these can be appropriate tools, when delivered in an understandable and timely way, for introducing public policy criteria that extend beyond the traditional least cost mandate of regulators." [p.6]

We are concerned that the current wording of the Interim Report does not fully reflect this principle. The Interim Report appears to make what we consider to be a false contrast between a "traditional" regulatory focus on "least cost" and "deviations" imposed by the energy objectives in the *Clean Energy Act.*

The Interim Report states, "as a regulator, the BCUC's traditional focus is least cost while government frequently has a broader public policy focus." [p.6, underline added] It is unclear what the Task Force means by "traditional focus." However, for approximately the past decade the BCUC's focus has been on "most cost-effective," not "least cost," within the context of whatever legal requirements, considerations and objectives apply in a specific situation. The days in which the BCUC's primary focus was "least cost" are long gone, and properly so. From BCSEA-SCBC's perspective, the traditional, but now obsolete, regulatory focus on "least cost" too often amounted to 'least cost at any cost.'

Regarding the impact of the *Clean Energy Act* energy objectives on the Commission, the Interim Report's subheading "Increasing Deviations from Traditional Regulatory Roles" [p.7] creates that impression that the Task Force endorses the view that "These objectives have come to be seen as being too diverse and in many cases contradictory with each other or the UCA, making it difficult for the BCUC to balance the stated objectives." [p.7] While that view was likely expressed to the Task Force, BCSEA-SCBC would ask the Task Force not to accept it.

We acknowledge that some of the objectives stated in the *CEA* could be consolidated for a more succinct presentation. However, we disagree that the objectives are "too diverse." The objectives include energy efficiency, jobs, community development, GHG reductions, and low rates. Certainly these are diverse objectives – presumably that diversity is exactly what the legislature intended. The Commission is tasked with making decisions that foster clear, but diverse, objectives. The objectives themselves are not "contradictory with each other." Rather, consideration of the objectives in a particular case can often require the Commission to balance objectives. That does not "deviate" from the Commission's traditional role. The Commission routinely balances various factors in determining what is in the public interest or whether rates are fair, reasonable and not unduly discriminatory.

Our concern is that the criticism of the BC energy objectives as being "contradictory to each other" is code for criticism of the content of the energy objectives, specifically a view that low rates should be a higher priority than energy efficiency, GHG reductions and other stated objectives. In our view, the Task Force has correctly refrained from straying into the merits of energy policy and the wording of the report should make that very clear.

2. Intervenor standing

Concerning the BCUC's approach to intervenor standing, we disagree with the Interim Report which implies that the Commission does not adequately vet participation by intervenors and suggests that standing should be restricted by legislation.

The executive summary states that the Commission's review process should be "improved" by, among other things, "vetting who has standing to appear." In fact, the Commission already does vet who has standing to appear. It does so quite appropriately and judiciously. As we said in our 13 June 2014 comments:

> "Regarding standing, the Commission uses several categories of participation in proceedings: intervenor, interested party, and letters of comment. These roles come with different opportunities and responsibilities. The intention is to foster participation by parties other than the applicant in proceedings in a manner that maintains procedural fairness while also suiting the needs of the party itself, optimizing regulatory efficiency (timing, cost and resources), and contributing to the effectiveness of the Commission's decision-making."

On page 23, the Interim Report implies that the Commission's approach to intervenor standing in the FortisBC Inc. (electric) "'Smart Meters' Application" may have been a significant problem. We disagree. Our 13 June 2014 comments were to the opposite effect:

> "In many proceedings the Commission allows a party to intervene merely upon identifying the party's interest in the proceeding, important issues and intended degree and nature of participation. In such proceedings there is no formal "standing" threshold. However, the Commission does exercise its authority to impose a standing requirement for status as an intervenor in certain proceedings, notably where there are or might be very large numbers of intervenors expressing the same or similar views. In the FortisBC Advanced Metering Infrastructure proceeding, for example, the Commission limited intervenor status to ratepayers of FBC and allowed individuals residing outside of the FBC service area to

> participate as interested parties. In BCSEA-SCBC's view this is an appropriate practice." [underline added]

The Interim Report states as if it was an established fact that: "as the Mackenzie Valley Pipeline, Enbridge Northern Gateway Project and Trans Mountain Pipeline expansion proceedings have shown, projects are increasingly subject to interventions by large numbers of people who do not appear to be directly affected or have relevant information or expertise." [page 23] The Interim Report later reiterates this "directly affected or have relevant information or expertise" language and concludes "While it may not be necessary to codify this approach to standing in legislation, doing so could be useful and help avoid a referral to the courts in a strongly contested hearing."

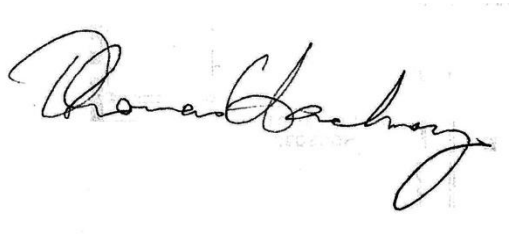
With respect, we strongly disagree with the notion that intervenor standing in Commission proceedings should be restricted by legislative amendments. Legislated restrictions on intervenor standing have generally led to time-wasting preliminary proceedings at the regulatory level and to considerable litigation at the court level. In our view, the legislated attempt to limit intervenor standing at the National Energy Board is an object lesson in what should be avoided for the BCUC, not emulated. In our view, the BCUC's tiered participation approach is working well. As we stated in our 13 June 2014 comments:

> "Moreover, and more importantly, it is clear that anyone who disagreed with a Commission decision concerning status as an intervenor, interested party or letter of comment would be given a fair opportunity by the Commission to make representations and to have a considered decision on the point."

Conclusion

Thank you for this opportunity for input.

Yours truly,



Thomas Hackney, Case Manager