

COMMERCIAL ENERGY CONSUMERS (CEC) ASSOCIATION OF BC
INITIAL INPUT TO THE
INDEPENDENT REVIEW OF THE BRITISH COLUMBIA UTILITIES COMMISSION

The Commercial Energy Consumers (CEC) Association of BC has the following comments for the Task Force in response to the Minister's recent July 15th, 2014 letter to the Chair of the Task Force, Peter Ostergaard.

Private Sector Water Utilities & Other Utilities

There are a number of private sector water utilities throughout the province where utility and regulatory issues, beyond water quality and environmental issues, are quite relevant for customers of the utility. There are also private sector sewer utilities throughout the province which can have utility and regulatory issues, beyond water treatment and effluent discharge quality, which are relevant for customers of the utility.

In these circumstances the courts are often dealing with disputes that have become larger and more important to the participants than the costs of pursuing the disputes.

to the CEC submits that there is a public interest benefit to bringing these utilities under the auspices of the BC Utilities Commission (BCUC) to enable quasi-judicial resolution of complaints and issues between these utilities and their customers.

These utilities can have issues just like larger utilities but frequently do not have the resources to become engaged in extensive regulatory process and procedure.

The BCUC is well respected in the commercial community for its ability to conduct regulatory process in a sound, deliberative fashion and reach well thought out decisions based on the evidentiary record in the proceeding.

With respect, the courts are often not well suited to managing the regulatory concerns of utility or customer interests.

The CEC recommends that the BC government consider incorporating these utilities into the scope of the Utilities Commission Act (UCA).

The government may want to incorporate the regulation of BC Ferries under the same umbrella. There could certainly be efficiencies in a model, which enables shared services and other strategies to lower and contain the costs of regulation.

BCUC Governance, Roles & Mandate

The CEC is not specifically aware of the roles, processes and mandates of various parties in the governance of the BCUC. The CEC's understanding, such as it is, is derived from observations of the end results from the outside.

The CEC's perception of the governance of the BCUC is that it has followed something of the course of development the CEC has observed in the government's management of other Crown agencies and corporations.

The CEC's perception has been that the governance processes employed by government reflects the prerogatives of appointment by the Lieutenant Governor in Council, influence of Ministers of Government and that the process in behind that involves a level of management of the process to vet and assure some degrees of competence for the roles.

The CEC's observation is that over time despite many turns and twists the role and importance of the BCUC as a regulator of utilities and therefore the "regulatory compact" has increased, particularly in the value it provides in removing a level of politics from the determination of rates for customers of utilities and from the implementation of policy and direction determined to be in the public interest.

The CEC's observation is that the evolving importance of this level of regulation increasingly requires significant depths of understanding about the utilities, policies and directions for utilities, the public interest, the regulatory tribunal process and the consequent impacts on customers of the utilities.

The CEC expects that this dynamic will continue over time to stretch the capacities of the governance processes, even as they evolve and have been improving. The CEC expects that the nature of the requirements for the governance process will demand increased levels of professional management as a process. This would impact, at the level of Chair of the Commission and Commissioners, the recruiting of the key personnel, the determination of mandates and role descriptions, pay structures, organizational development, leadership and retention of personnel.

The CEC would recommend that the Task Force concentrate its focus on those elements of the governance which can most likely improve the permanence and quality of the Commission in carrying out its regulatory responsibilities. The CEC expects that this may have implications of adding to the pay levels and cost structure of the Commission. The CEC expects that such suitable improvements as the Task Force may select to focus on would likely be beneficial to the overall effectiveness of the Commission and beneficial to utility customer interests.

BCUC Independence

The CEC believes that the independence of the BCUC is a critical element of the ability of the Commission's contributions to the cost effectiveness of energy investments and operations in BC.

The UCA provides the legislative basis for this independence and the Commission has over time developed credibility for independent, deliberative decision making.

In some cases the Commission has provided decisions which have been subsequently altered by government directives. The issues behind particular cases are not the subject for review in this case. However, the general structural effect of this situation is to present the potential for compromising Commission decision making.

The CEC's view is that this situation derives from a structural issue with regard to how policy direction issues are handled between the regulatory processes of the Commission and the legislative and policy processes of government.

The CEC submits that structurally establishing closer contact and coordination of policy issue review between the Commission and the government in a transparent manner would go a long way to providing additional benefits from the evaluation of the policy issues as well as obviating the need for frequent issuing of directives which appear to counter Commission decision making.

Consumer Representatives

The concept of the Utilities Commission in some way structurally having a 'stakeholder' or 'consumer' representation role and responsibility to contest Utility application filings would seem to present the regulation model with a variety of other complications.

The Commission effectiveness as an independent quasi-judicial review body may be seen to be compromised. The Commission's responsibilities in this role for advocacy of a position which is then not incorporated in a decision could be seen to become a liability. The perspective from which this role could be carried out would have to contend with the public interest issues versus the perceived interests of the stakeholder or consumer group. There would likely be a potential for added expense related to duplication of representation. Where interveners are present and the Commission's party responsible for a stakeholder or consumer position is also present the potential for duplication of representation and the attendant cost increases.

The CEC understands that such concepts have arisen in other jurisdictions where the intervener support for capacity to participate became an uncontrolled burden on the process. The CEC believes that the Commissions processes for controlling these issues are sufficient to prevent such issues from becoming uncontrolled in BC.

The CEC believes that any 'representation' issues or concerns would likely be better resolved by strengthening the representation model currently operating in BC as opposed to duplicating it or adding an alternative.

BC Government and Regulatory & Policy Direction

The CEC has focused its analysis on the critical importance of the effectiveness of the BCUC and the degree to which this can be seen to be connected to the way in which government policy direction evolves.

The CEC's observation is that questions of policy occur frequently in the regulatory process and that they are often vital to the achievement and realization of increased effectiveness in regard to utility customer interests and the public interest.

The CEC has observed on occasions that the Commission has had specific applications or issues under review and in the middle of regulatory process and in some cases has followed through to providing complete decisions, when the government decides to implement a policy change and issue a new direction to the BCUC and or the Utility.

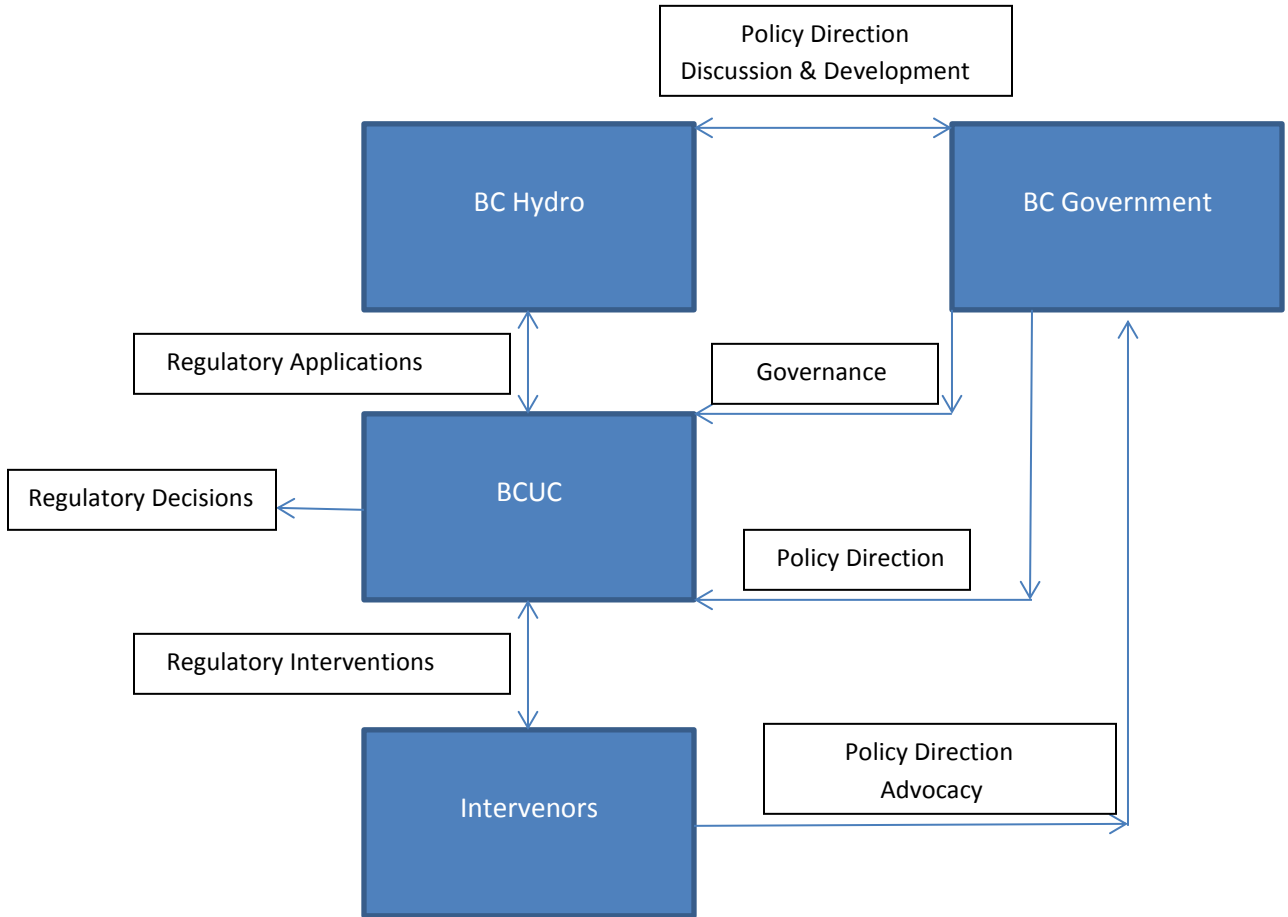
The CEC finds that there are two important consequences which evolve from this structure. The first is that the Commission is potentially or actually undermined in its independent authority to carry out its responsibilities under the UCA. The second is that the policy and direction process can lose sight of a relevant and important fact base and record as well as a balance of interests as it responds more to specific political interests.

The CEC view is that the issues here are primarily structural in that they are related to the relationships and the particular constraints used to deal with policy issues. The structural issues become exigent because the government does not have a transparent structure for dealing with the BCUC in regard to policy and regulatory direction. Instead, it would appear that the government has implemented policy through separate private discussion with the utilities. The corollary circumstance is that the utilities are able to avoid discussion and provision of data to inform alternative policy options. This constraint removes from consideration important concepts and options, which then are deficient in development because of a lack of analysis and data in a regulatory forum.

The government, the utility's customers, the public interest, BCUC effectiveness and the utilities would be better served by a more robust structural process that enabled government to receive information with respect to policy and policy evaluation. Making the clarification and development of policy a two-way street between the Commission and the government would be the single greatest improvement to the effectiveness of the regulatory process that the Task Force could recommend to government. Importantly this is a structural recommendation, which is in fact easier to accomplish than softer forms of recommendations. It would require government to give up some elements of control to get effectiveness in return.

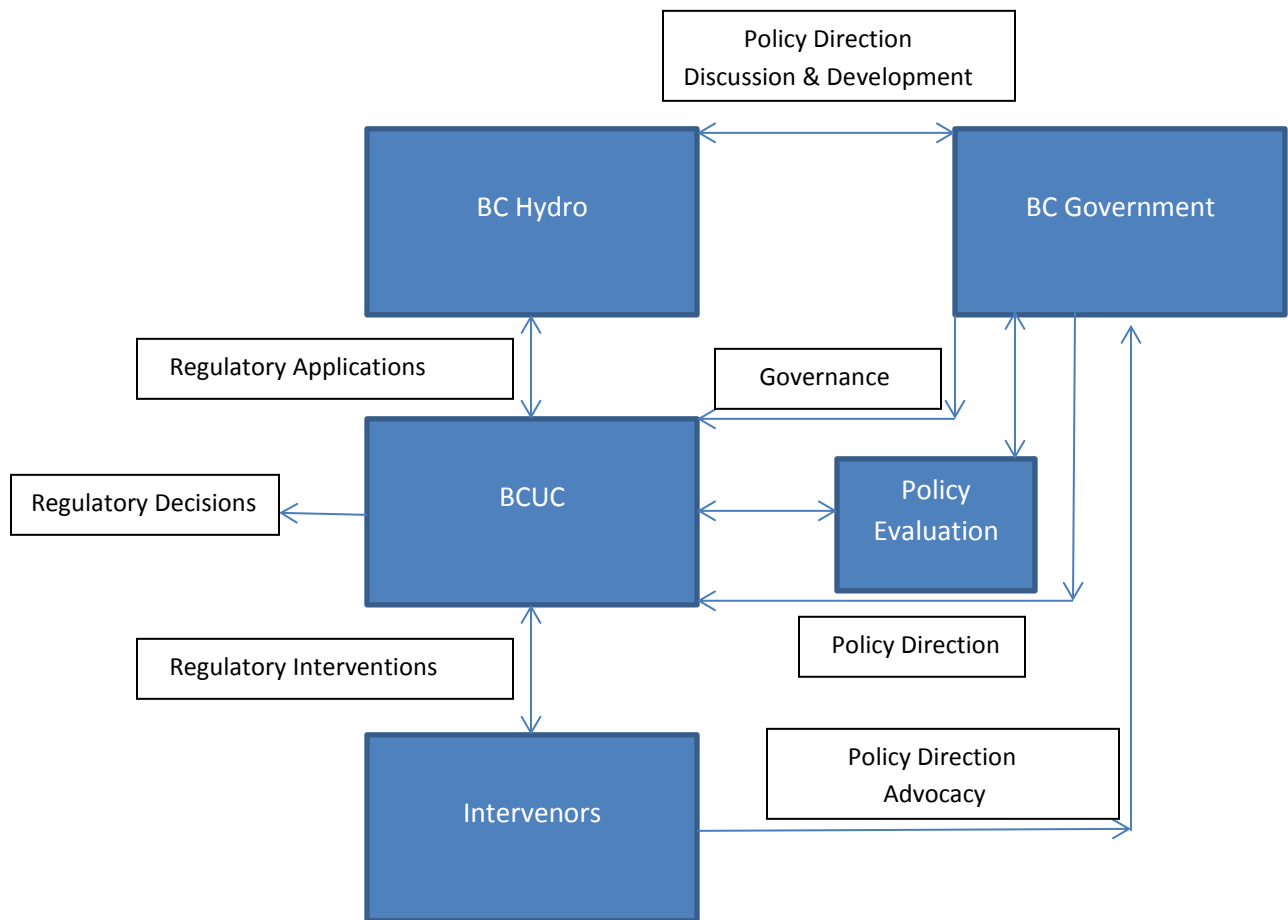
The CEC has represented the restructuring of policy direction consideration in a graphic of the structural form changes being proposed, contrasting the existing relationships with the proposed structural change reform recommended.

Figure 1



The purpose of the above graphic is to reflect that policy direction process appears to the CEC to be a one way "Directive" method and nature to the policy direction process, which does not appear to take advantage of the BCUC's deliberative process advantages. As well it shows the nature of the private sector relationship to policy being that of advocacy to government.

Figure 2



The purpose of the above graphic is to show the recommended structural reform of adding bi-directional process for policy direction evaluation. This process can engage the BCUC in the policy process to a greater degree than appears to occur now. It specifically involves them in the deliberative process of evaluating policy and enabling them to do so with the assistance of their public intervention processes.

The importance of this linkage between the policy and legislation roles of government and the deliberative roles of the BCUC regulatory process is that these issues are frequently the ones that generate the greatest contributions to the cost-effectiveness of the BCUC processes. Also this is the area where, for the most part, much of the 'disconnect and weakening' of the BCUC and the regulatory process occur.

The Clean Energy Act Objectives

The Clean Energy Act has specific objectives as follows;

The following comprise British Columbia's energy objectives:

- (a) to achieve electricity self-sufficiency;*
- (b) to take demand-side measures and to conserve energy, including the objective of the authority reducing its expected increase in demand for electricity by the year 2020 by at least 66%;*
- (c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;*
- (d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;*
- (e) to ensure the authority's ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the BC Hydro Public Power Legacy and Heritage Contract Act continue to accrue to the authority's ratepayers;*
- (f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;*
- (g) to reduce BC greenhouse gas emissions*
 - (i) by 2012 and for each subsequent calendar year to at least 6% less than the level of those emissions in 2007,*
 - (ii) by 2016 and for each subsequent calendar year to at least 18% less than the level of those emissions in 2007,*
 - (iii) by 2020 and for each subsequent calendar year to at least 33% less than the level of those emissions in 2007,*
 - (iv) by 2050 and for each subsequent calendar year to at least 80% less than the level of those emissions in 2007, and*
 - (v) by such other amounts as determined under the Greenhouse Gas Reduction Targets Act;*

(h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;

(i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently;

(j) to reduce waste by encouraging the use of waste heat, biogas and biomass;

(k) to encourage economic development and the creation and retention of jobs;

(l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;

(m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia;

(n) to be a net exporter of electricity from clean or renewable resources with the intention of benefiting all British Columbians and reducing greenhouse gas emissions in regions in which British Columbia trades electricity while protecting the interests of persons who receive or may receive service in British Columbia;

(o) to achieve British Columbia's energy objectives without the use of nuclear power;

(p) to ensure the commission, under the Utilities Commission Act, continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act.

These objectives serve to constrain planning for BC Hydro in ways that produce very dysfunctional tradeoffs. They represent a form of single metric planning, which is highly inappropriate in the multi-dimensional multi-variate world of energy planning in BC.

One of the consequences is that many useful options that BC Hydro could be examining in its planning are precluded from examination because they would be inconsistent with the law. Unfortunately billions of dollars of potential value to the BC economy are not accessible because the prescription of these objectives does not allow the utility, and when issues are before the Commission, the Commission to make appropriate and valuable tradeoffs between objectives.

One of the most important recommendations the Task Force could make would be to have these objectives rewritten in a more directional non-absolutist form to enable deliberative consideration of the appropriate tradeoffs in particular circumstances and the realization of a net gain in cost effectiveness and or the public interest.

Crown Corporation vs Investor Owned Utilities Regulation Model

The CEC's first observation is that there is currently a different regulatory model for BC Hydro as a Crown Corporation than there is for Investor Owned Utilities. For instance the BC Hydro's long term resource planning (Integrated Resource Planning- IRP) is not reviewed by the Utilities Commission but instead goes directly to government. BC Hydro has a long list of projects exempt from BCUC review and certification as being in the public convenience and necessity (CPCN). BC Hydro's rate setting has essentially been removed from the purview of the Commission and is taken on directly by the government, although the plans now are for this responsibility to be returned to the BCUC at some future point. The BC Hydro energy purchase agreements, which used to be reviewed by the Utilities Commission, are no longer reviewed.

The distinction above is not exclusive for the Crown Corporations in that government has exempted some projects for investor owned utilities as well. However the distinction is in degree a very different regulatory model.

The difference between the models is primarily a loss of openness and transparency. This means that critical information is no longer in the public domain. The consequence is that there is likely a loss of cost effectiveness. The cost effectiveness of the Utilities has had demonstrable roots in the information and review processes undertaken by the BCUC.

The CEC does not expect that a regulatory model for Crown Corporations needs to be much different than one for investor owned utilities.

The primary difference is that government owns the Crown Corporation and has responsibility for running the Crown as well as responsibility for regulating. This creates a different dynamic for Crown owned enterprises, primarily where government policy direction becomes misaligned with longer term utility customer interests and the public interest. In these circumstances government is more likely to pursue having control of all the decision making to ensure that it is able to implement its policy and not be challenged or frustrated by its regulatory agency.

It is this dynamic that creates the opportunity for additional cost effectiveness through restructuring the policy relationship, to the extent that better solutions come from the altered policy dynamic. The improvements to the policy dynamic are relevant to the Investor Owned Utilities as much as they are to the Crown Corporation.

Consequently the CEC sees value in having the regulatory regime and process for both the Crown Corporation and Investor Owned Utilities being reasonably similar. Having said that Crown Corporations are instruments of public policy implementation so there will be exceptions where it will be relevant to have permanent differences. For instance the Crown Corporation taxation regime, capital structure and return on equity investment may be directed from time to time as they have been for many years now to create a balance between government revenues, from the economic rents available between marginal costs of supply and embedded average costs, and the customer rates that impact business productivity, profitability and economic development.

The CEC submits that the Task Force should recommend that government should limit the differences in regulation between Crown Corporations and Investor Owned Utilities to the few exceptions necessary for balancing government revenue and economic impacts. Particularly, the CEC submits that the Task Force should encourage the government to normalize the regulatory regime differences between Crown Corporation regulations and Investor Owned Utility regulations, in the areas where the policy direction reforms the CEC recommends can become an improved solution to the status quo.