



Friday, June 13th 2014

The BCUC Core Review Task Force:

Mr. Peter Ostergaard, Chair

Mr. Michael Costello

Mr. Brian Wallace

Re: BCUC Core Review Submission by the Clean Energy Association of British Columbia (CEBC)

Dear Sirs:

CEBC expresses its thanks for the opportunity to have met with the Task Force panel and file this submission on behalf of its membership.

The Clean Energy Association of British Columbia (CEBC) is a non-profit organization representing its 225 members, who work together to provide cost effective clean electricity throughout the province to the benefit of each and every British Columbian, day in, day out. Wind, hydro, biomass, natural gas and other project developers together with technical and commercial supply chain firms provide province wide employment to thousands. BC's clean energy projects today are indicative of two important societal changes we see across the province: attention to environmental issues and First Nations participation as project owners, partners and members of supply chains.

In preparing this submission we asked ourselves the following three questions vis a vis the BCUC and its role in electricity regulation:

1. Do we believe the BCUC regulatory process works: well or very well, acceptably, not well, or not at all?
2. Do we believe there is (or could be) respect for the BCUC process?
3. Do we believe the BCUC has the capability and the will to take into consideration all the relevant matters and to make tough choices that balance many competing concerns?

At present, the answers to our three questions posed above are:

Does the regulatory process work? At present, at least for BC Hydro, there is limited 3rd party regulatory review. However, we believe that a fulsome regulatory process could work, if empowered to give independent judgements, and if structured and funded to conduct independent reviews.

Do we believe there is respect for the regulatory process? Yes, the public has a deep inherent respect for the concept of a regulatory process, provided it is perceived to be



independent and objective. A good example drawn from another context is the Labour Relations Board.

Do we believe the BCUC has the capability and the will? No, not in its present state. However, it could have, once properly resourced, and empowered to function as an independent objective body, the way it was intended.

Below we itemize some of our concerns and indicate how the answers above could be turned into three unreserved “yeses.”

General Concern #1: Ratepayers’ vs. the Public’s Interest

The world of utility regulation must change with the needs of society.

The current BCUC regulatory model is, we believe, outdated. It needs renewal in order to better reflect the full range of today’s societal needs. Nothing remains the same. Consider biking and roads. Years ago helmets were not required. There were no bike lanes. Today, communities compete to have the safest bike infrastructure with the most kilometers available for bike travel.

British Columbia, with its vast potential for resource developments is in many ways leading the country in two key societal changes: First Nations engagement in resource development and society’s focus on mitigating environmental impacts of development. As a result, electricity generation, transmission, distribution, export and import today are all vastly different from in the 1980s and earlier. Has the BCUC kept up with these changes? We think not completely.

We believe that two of the most prominent changes in society’s focus are: that the environment, both locally and globally, must be conserved and where necessary preserved for future generations; and that First Nations’ rights and title must be included in decision making. The people have said that the environment we leave to future generations is of crucial importance, and the courts have ordered that First Nations must be consulted and where necessary accommodated.

Utility regulation can no longer focus exclusively on ratepayers. In this changed and changing world, although the ratepayers’ interest will continue to be a prime focus, the regulatory process cannot be aimed exclusively at minimizing the costs to ratepayers. It must be aimed at balancing all of the public’s (often competing) interests. Ratepayers do NOT have the right to the cheapest possible electricity at the expense of other important public interests.

In particular, from our point of view, this would include the need to promote clean energy alternatives as a means of conserving our environment, as well as a means of advancing the economic well being of all British Columbians including First Nations communities -- as opposed, for instance, to importing large amounts of coal power, which may be cheap for

ratepayers, but which is destructive to both the global environment and the jobs and economic well-being of a diverse cross-section of British Columbians.

General Concern #2: Efficiency vs. Effectiveness

Both efficiency and effectiveness are important objectives for regulatory processes but of these two, **effectiveness must be the prime objective**. A process cannot be efficient if it is not effective. One could have the cheapest and quickest process imaginable, but if it does not produce effective results, then it is useless. It is a waste of both time and money.

In terms of the usual measures of efficiency, (such as time, cost, and effort), the present system of periodically suspending a public process in favour of an internal closed door review is possibly the cheapest and quickest available. This may seem to be cost-effective in the short term but, in the longer term, it may turn out to be just the opposite.

On a scale of effectiveness, the present system rates poorly. It offers none of the benefits that are supposed to come from an effective process. No social licence is earned and, therefore, there is no long term durability for the decisions.

Decisions stemming from such a process are not accepted as fair, objective or unbiased. They appear to give carte blanche to whatever point of view the utility is able to persuade upon key officials. Without the benefit of any counter evidence or contrary points of view, these officials will generally have neither the expertise nor the resources to question the utility's view. In spite of the government's confidence in its own decisions, this process is no substitute for effective utility regulation.

Not surprisingly, these decisions will be subject to doubt, skepticism, and challenge by parties from one end of the societal spectrum to the other. If decisions are to be accepted and enduring, they must earn a social licence.

What then are the key ingredients for regulation that will earn this social licence and be perceived as effective?

Certainly one common denominator for effectiveness, in today's age of instant communication, must be transparency. Only with openness and transparency can the process be seen to be independent, objective and unbiased. Our information age brings the population news and views almost instantly, and from many different perspectives. There is no doubt that BC's citizens, as well as its utilities' ratepayers deserve, and should demand, the 'best'. To give its citizens this perception, BC's regulatory process must be open and visible, and visibly objective.

CEBC, therefore, believes that to achieve the needed perception of effectiveness in the public's view, the Crown utility's regulatory process must be:

1. Open, public, and transparent;

2. While directed by political principles, it must be (and be seen to be) objective;
3. It must be available and accessible to all relevant societal points of view -- for which this accessibility must include reasonable funding for these diverse points of view.

This accessibility to all points of view is perhaps the most important key ingredient for the public perception of fairness, openness, and objectivity. To achieve this, the regulatory process must:

- Recognize the many diverse, and often competing, objectives in our society;
- At least acknowledge each of their validities, even though they may not all receive the same weight or credibility assessment in any given decision;
- Rather than dismissing any views out of hand, seeks to find the most cost-effective ways to accommodate as many as possible;
- And, at the very least, gives a thorough and well reasoned explanation of how each viewpoint was factored into the eventual decision.

Such a process of thorough and well reasoned evaluation of all relevant perspectives is essential in creating public confidence in the objectivity and effectiveness of the process.

Fast and cheap does not mean effective.

There is a popular belief, especially within some circles, that such an all-inclusive process would be too lengthy, costly, and cumbersome and therefore not cost-effective. However, this is largely a misconception, because some of the most cost-effective proceedings in recent memory -- proceedings that have saved ratepayers and taxpayers many millions of dollars -- were considered by these same circles to be needlessly lengthy, costly, and cumbersome.

Two proceedings come to mind:

1. The 2006 Alcan LTEP Application, which was rejected by the Commission, thus forcing the utility (BC Hydro, in this case) to return with a better deal for all British Columbians.
2. The proceeding in 2005, looking into BC Hydro's Vancouver Island Gas Plant proposal. This similarly was rejected, forcing BC Hydro to rethink its plans and seek competitive bids from the market, whereupon it came back with a much superior proposal.

Together, these and other so-called "costly and cumbersome" proceedings have saved the ratepayers, and British Columbians in general, tens if not hundreds of millions of dollars. There is nothing about costly or cumbersome that should imply ineffective.

More Specific Areas of Concern

BCUC objectives need to be broadened



CEBC (and its predecessor association, IPPBC) most often stands alone in advocating the development of small scale (relative to BC Hydro) clean energy projects. As such, CEBC is generally representing a point of view focused on those above-mentioned societal changes -- namely, the increased emphasis on the environment and First Nations, rather than on ratepayer impacts exclusively. In the modern context, these additional objectives should be regarded as equally as important as ratepayer impacts in measuring the success of a utility's operations -- and, consequently, the cost-effectiveness of that utility's business.

Recommendation: Applications before the BCUC will undoubtedly have environmental and First Nations considerations that will need to be addressed, in addition to financial, economic, and ratepayer impact issues. We recommend that the legislation empowering a newly reconstituted Commission should specifically include both environmental and First Nations considerations as part of the Commission's mandate, and given equal stature to the usual consideration of ratepayer cost and economic value.

We further recommend that Commission panels should be composed of panelists with expertise and experience in each of these three areas (and have access to staff with similar expertise and experience) in order to more easily understand and deal with the relevant issues.

Oral vs. written vs. negotiated settlement processes

CEBC by and large favors the oral hearing process over the written and negotiated settlement process. We believe it provides the process with the 'shortest distance between two points'. It may be understandably grueling for some. However, in most cases, it will produce more responsive answers to important questions, quicker and with less burden of irrelevant material. It can also enable Commissioners to independently and proactively encourage participants to present their own evidence promptly and succinctly without recourse to volumes of back up documentation?

In terms of both effectiveness and efficiency, CEBC places the Oral Hearing process at the top of the list, with the other formats falling considerably behind:

1. Oral Hearing -- most open and transparent, most effective, and also, in the long run most efficient.
2. Written Hearing -- may appear to be cheaper in theory, but multiple rounds of ineffective questioning can render it inefficient in practice
3. Negotiated Settlement Processes -- decidedly not transparent, not generally viewed as unbiased, and cannot represent all the necessary points of view fairly.
4. Government decisions behind closed doors -- the least transparent, not viewed as unbiased or objective.

Recommendation: Establish parameters and guidelines for each of the process options. Ensure inclusion of information response time schedules together with explanations if requested information is not being provided.

The BCUC and BC Hydro

[We address this comment specifically in regard BC Hydro, because CEBC's particular hearing experience is primarily with BC Hydro applications.]

BC Hydro has been able to develop most of its recent capital plans, project and operating budgets independently of BCUC oversight. These expenditures amount to billions of 'BC dollars'.

By the end of F2015 BC Hydro will have expended \$15 billion on new capital without having presented a comprehensive capital plan for BCUC review. Since 2006 Hydro's debt has increased from approximately \$6.5 billion to over \$15 billion, Deferral Accounts have increased from less than \$500 million to \$5 billion and annual compensation costs have increased from \$500 million to \$900 million. Ratepayers and taxpayers are entitled to an oversight review process. Who, if not an independent BCUC will look after their interests?

Recommendation: The BCUC's fully transparent independence needs to be solid and guidelines established for the utility to ensure that it participates in a fair and comprehensive manner in all proceedings.

The BCUC and Participant Funding

PACA support will be increasingly important to ensure that all regulatory processes are viewed as full, fair, and independent. Above we refer to societal changes affecting future applications as well as those who will file as application interveners. As outlined in this submission, future interveners will necessarily represent many diverse points of view. A full and fair hearing of these diverse points of view is important for achieving the comprehensive social licence needed for decisions to be regarded as legitimate and durable. Accordingly, future funding requests are likely to increase – how will they be dealt with?

Recommendation: The PACA Guidelines should be reviewed every two years. Reviews should include members of the government, the BCUC and intervener representatives. Guidelines must include the standard issues of day rates and per diems, but must also more fully address eligibility of both interveners and those working for those interveners. Threshold contribution levels (and resultant PACA funding approvals) are required to minimize risk of a funding expectation being partly or fully denied by the applicant themselves.



Staffing the BCUC

Presently Commissioners are appointed for a two year term working either part or full time. The Commissioner employment agreement needs to meet what should be a very demanding, independent, transparent job description with fair market remuneration over a five year term appointment. Commissioners and staff should receive regular upgrade and training courses on issues of the day. They should also have ample opportunity to visit sites associated with the applications before them.

Recommendation: We highly recommend this review consider the tenure, remuneration, training and further education of the BCUC Commissioners and staff as a top priority. As for most modern organizations, the BCUC's strength is in its people. Empower and remunerate them with independence, transparency and authority and great work will be accomplished for the benefit of all British Columbians.

In Conclusion

Our discussion of general concerns, as well as these five specific areas and the accompanying recommendations, reflect our thoughts on how to provide the correct answers to the initial questions posed. CEBC, as an association whose members provide up to 15% of British Columbians' electrons, believes we need a strong and independent BCUC to protect the interests of all British Columbians, including but not limited to, all residential, commercial and industrial consumers of electricity.

We welcome this opportunity to work with government in making improvements.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul Kariya", with a long, sweeping flourish extending to the right.

Paul Kariya
Executive Director

cc.: Honorable Suzanne Anton, Minister of Justice;
Honorable Bill Bennett, Minister of Energy and Mines and Minister Responsible for Core Review