



FOR GENERATIONS

Janet Fraser

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

bchydroregulatorygroup@bchydro.com

Via email: bcucreview@gov.bc.ca

June 13, 2014

Dear Sirs:

**RE: British Columbia Hydro and Power Authority (BC Hydro)
Independent Review of the British Columbia Utilities Commission (BCUC)**

BC Hydro writes to provide its first written submission to the BCUC independent review task force, in accordance with the revised schedule requesting submissions by June 13, 2014.

For further information, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Janet Fraser".

Janet Fraser

Chief Regulatory Officer

fj/af

**Independent Review of the
British Columbia Utilities Commission (BCUC)**

BC Hydro Submission

To the Task Force

June 13, 2014

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3b)..... 21

1 Introduction and Summary of BC Hydro Submission

BC Hydro is writing to provide its comments to the BCUC review task force (**Task Force**) in accordance with the revised date of June 13, 2014 as the deadline for written submissions.¹ In summary:

1. The BCUC's review processes should be made more results oriented as opposed to process oriented, with more focus on relevant issues. BC Hydro's main concern is with BCUC staff, whose actions BC Hydro believes have at times resulted in inefficient and ineffective BCUC regulatory reviews.
2. BC Hydro suggests the following organizational and administrative changes which could be implemented without amendment to the *Utilities Commission Act*² (**UCA**)
 - Re-institution of an executive director of staff position to assist the Chair with supervision and direction of the work of BCUC staff. Section 7 of the *UCA* gives the BCUC the authority to retain officers and employees it considers necessary
 - Lieutenant Governor in Council (**LGIC**) appointment of some full-time commissioners pursuant to section 2 of the *UCA*. Currently, with the exception of the Chair, all commissioners are part-time. This is out of line with the complexion of many public utility commissions. More full-time commissioners relative to the existing mix would offer continuity.
 - Better use of legal counsel to, among other things, vet BCUC staff Information Requests (**IRs**) prior to issuance and to assist with identification of material application issues.
3. There are a number of BCUC practices that work well, including adoption of guidelines for alternative review processes and application information

¹ <http://www.empr.gov.bc.ca/EEC/Strategy/EEA/Documents/BCUC%20Review%20Timeline%20-%20Web.pdf>.

² R.S.B.C. 1996, c.473.

1 requirements. BC Hydro also recommends a guideline or performance measure
2 for application review timelines as follows: (1) 100 per cent of BCUC decisions
3 are issued within one year of utility application submission; and (2) 100 per cent
4 of BCUC decisions are issued within 90 days of the close of arguments. BCUC
5 panels should be given the flexibility to request additional time.

6 4. The sole ‘legislative-type’ change BC Hydro advocates is with respect to the
7 Administrative Penalties Regulation,³ which led to the creation of the separate
8 BCUC Performance Monitoring, Conduct and Compliance (**PMCC**) department.
9 BC Hydro recommends a review of the PMCC and questions whether it is
10 necessary or cost effective.

11 5. BC Hydro does not take a position on whether the Task Force should
12 recommend a utility consumer advocate office but notes that creation of such
13 an office likely requires amending the *UCA* or passage of a stand-alone Act.

14 **2 Structure of Submission**

15 This submission is structured to generally follow the Task Force Terms of Reference
16 (**ToR**) issued by the British Columbia (**B.C.**) Government on April 28, 2014 by
17 addressing the main topics of BCUC process (**ToR**, section 2) and BCUC
18 organization (**ToR**, section 3). Certain **ToR** topics have been combined to minimize
19 repetition in this submission.

20 Jurisdictional comparisons are referenced where relevant. The tentative draft
21 timeline provides for a second round of written submissions with a deadline of July 7,
22 2014. BC Hydro understands that the Task Force has hired a consultant to review
23 comparable utility regulators and would welcome the opportunity to examine the
24 consultant’s jurisdictional review, preferably prior to the second round of written
25 submissions.

³ B.C. Reg. 316/2012.

3 Background: BC Hydro and Nature of Interaction with BCUC Since 2008

BC Hydro is a Crown corporation established in 1962 under the *Hydro and Power Authority Act*.⁴ BC Hydro is the largest electric utility in the Province of B.C., serving about 95 per cent of B.C.'s population in a service area encompassing most of B.C., with the exception of the City of New Westminster that has its own municipal utility and the south-central part of the Province, which is served by FortisBC Inc.

In Fiscal (F) 2013 BC Hydro made 288 regulatory filings with the BCUC and processed approximately 3,000 emails to and from BCUC staff. Most of these filings were compliance type-filings. In recent years, almost all of BC Hydro's significant applications have been reviewed through written processes. In 2008-2009, the 2008 Long Term Acquisition Plan and F2009-F2010 Revenue Requirements Application (RRA) were subject to oral hearings in addition to multiple rounds of IRs. In 2012 the adequacy of First Nation consultation component of the Dawson Creek/Chetwynd Area (DCAT) Certificate of Public Convenience and Necessity (CPCN) Application was subject to an oral hearing. As a result, BC Hydro's comments are made in the context of BC Hydro's interactions with the BCUC primarily through written proceedings, Negotiated Settlement Processes (NSPs) and one Streamlined Review Process (SRP).

4 BCUC Process Topic

4.1 Existing "per GJ" funding model and possible alternatives (ToR, section 2a)

The BCUC's costs are primarily recovered through a levy on the public utilities that it regulates pursuant to the Levy Regulation.⁵ Section 2 of the Levy Regulation authorizes the BCUC in the case of public utilities to base the amount of the levy "on

⁴ R.S.B.C. 1996, c.212.

⁵ B.C. Reg. 283/88.

1 the value or the volume of the energy to be transmitted or distributed or the service
2 furnished”. The BCUC collects levies by way of annual orders which contain two
3 main inputs: (1) the dollar per gigajoule rate based on each public utility’s equivalent
4 of energy sold for a particular calendar year; and (2) the BCUC’s forecasted budget.
5 In BC Hydro’s view, the ‘energy equivalent sales method’ appears to be the most
6 reasonable proxy for the incidence of BCUC time and costs devoted to each
7 regulated public utility given that the number of public utility applications and their
8 complexity can vary greatly from year to year. However, BC Hydro is interested in
9 reviewing any alternative funding models that the Task Force consultant
10 jurisdictional review brings to light.

11 BC Hydro’s annual BCUC funding levy for F2015 is \$2,851,792, amounting to about
12 45 per cent of the BCUC’s budget. BC Hydro is concerned with the process that the
13 BCUC followed in setting the F2015 levy. Refer to section 5.3 of this submission.

14 **4.2 Timeliness, effectiveness, efficiency and cost of reviews (ToR, 15 section 2b); Review processes - Conventional oral and written 16 public hearings (ToR, section 2di)**

17 It should be noted that two recent developments outside the control of the BCUC
18 have added to review process complexity: (1) the British Columbia Court of Appeal
19 (**BCCA**) decision of *Kwikwetlem First Nation v. British Columbia (Utilities
20 Commission)*⁶ resulted in the BCUC undertaking the role of assessing the adequacy
21 of BC Hydro’s consultation with First Nations when adjudicating BC Hydro CPCN
22 applications;⁷ and (2) amendments to the *UCA* stemming from the *Clean Energy
23 Act*⁸ (**CEA**) require the BCUC to “consider and be guided by” the sixteen “British
24 Columbia’s energy objectives” listed in section 2 of the *CEA* when deciding
25 BC Hydro CPCN applications, section 44.2 *UCA* expenditure requests and section

⁶ 2009 BCCA 68.

⁷ The BCCA in *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)*, 2009 BCCA 67 held that the BCUC is obliged to assess the adequacy of First Nation consultation when exercising its section 71 *UCA* powers.

⁸ S.B.C. 2010, c.22.

1 71 UCA electricity purchase agreement (EPA) filings. However, in BC Hydro's view,
2 these two developments do not fully explain why in recent years the BCUC's review
3 processes for BC Hydro's applications have generally become less efficient.

4 **4.2.1 Oral Hearings**

5 BC Hydro's experience is that oral proceedings are run efficiently and effectively
6 once the oral hearing phase begins. BC Hydro has concerns with written
7 proceedings, or in the case of oral hearings, the IR phase of the proceeding as
8 discussed below.

9 **4.2.2 BCUC Staff and the IR Process**

10 BC Hydro acknowledges that the BCUC staff plays an important role in ensuring
11 BCUC panels have an evidentiary basis for decisions. However, BC Hydro believes
12 that there should be more BCUC staff emphasis on clear issue identification and
13 development, and less on filling in every perceived evidentiary gap that may exist.
14 BC Hydro's concerns are:

- 15 • BC Hydro has seen the number of IRs asked in its RRA proceedings steadily
16 increase, particularly in the last few years. BC Hydro's F2005-F2006 RRA was
17 the first RRA filed after a ten-year rate freeze and the information in the
18 application effectively re-introduced the BCUC to BC Hydro for rate-making
19 purposes. In that proceeding, a total of 705 BCUC staff IRs were asked. In the
20 F2007-F2008 RRA, the number of BCUC staff IRs increased to 1,090, but then
21 dropped back down to only 593 in the F2009-F2010 RRA. The BCUC staff IR
22 count began to rise significantly with the single year F11 RRA, in which 1,786
23 IRs were asked, followed by the F12-F14 RRA in which 2,456 staff IRs were
24 submitted to BC Hydro for responses.
- 25 • BCUC staff do not focus on key application issues, and tend to use the IR
26 process to fill in every perceived evidentiary gap no matter how
27 inconsequential. Illustrating this point is the observation that BCUC staff IRs in

1 the F2012-F2014 RRA proceeding in which focused to a large degree on
2 reviewing the financial schedules filed with BC Hydro's RRA, essentially
3 auditing the financial information, rather than reading, evaluating and
4 understanding the policy issues that are the foundation for the financial
5 schedules. Other BCUC staff IR practices include: issuing IRs that simply seek
6 confirmation of information in an application or asked about information related
7 to previous BCUC Orders or decisions that are facts.

- 8 • BCUC staff are not adequately differentiating between narrowly framed
9 BC Hydro applications and more substantive applications. This is evidenced by
10 the number of IRs issued by BCUC staff, which tends to have little relationship
11 to the complexity or importance of the application. Many of BC Hydro's
12 relatively small applications attract large numbers of IRs, and this in turn has
13 resulted in more drawn out and resource intensive processes than BC Hydro
14 considers necessary. A recent example is BC Hydro's 2014 application to
15 amend Rate Schedule (**RS**) 1289 (Net Metering), which was filed to request an
16 increase in the capacity limit for generation facilities that could use RS 1289.
17 Almost half of the BCUC staff IRs related to pricing and distributed generation
18 market development, neither of which had a bearing on the subject matter of
19 the application.
- 20 • BC Hydro has hosted pre-application workshops to help define the scope of the
21 application and to review the subject matter with BCUC staff and interveners,
22 and has provided drafts of applications on some occasions prior to such
23 workshops to elicit feed-back. However, pre-hearing workshops have to date
24 not been effective in reducing the number of BCUC staff IRs. An example is the
25 pre-application workshop that BC Hydro presented, at the request of BCUC
26 staff, on its Generation Resource Management (**GRM**) model for the F2012-
27 F2014 RRA (the workshop was also followed up with separate meetings with a
28 BCUC consultant). Despite these efforts, there were a number of IRs asked on

1 how the GRM model functioned and its role in the setting of BC Hydro's
2 revenue requirements. (Workshops have been of assistance to BC Hydro for
3 purposes of application drafting).

4 BC Hydro considers that the large number of IRs lacking relevance is partly
5 attributable to the apparent absence of supervision of the BCUC staff IR process.
6 Another contributing factor may be an increased reliance on and use of consultants.
7 Section 8 of the *UCA* rightly provides the BCUC with the authority to appoint
8 consultants "with special or technical knowledge necessary for the [BCUC] to carry
9 out its functions". It is to be expected that the BCUC will rely to some extent on
10 consultants. However, in BC Hydro's view there appears to be a tendency for the
11 BCUC to hire more external consultants for the review of applications than used to
12 be the case, and BC Hydro believes that this is one reason that there has been an
13 increase in the number of BCUC staff IRs, particularly with regard to the last two
14 BC Hydro RRA proceedings. BC Hydro is concerned that many of the IRs asked by
15 consultants are more of an educational nature for the consultant and reflect a lack of
16 knowledge of the issues, reducing the effectiveness and efficiency of proceedings. In
17 addition, excessive reliance on consultants likely limits the BCUC in building internal
18 capacity and knowledge.

19 The role of BCUC staff is further addressed below in section 5.1.2.

20 **4.2.3 BCUC Panel Scoping and Prior Decisions**

21 As a threshold matter, the particular BCUC panel reviewing an application should
22 exercise greater control over the identification of issues to be addressed in the
23 review process. It is BC Hydro's view that the number of irrelevant IRs has increased
24 due to a lack of clear issue definition in proceedings. BC Hydro submits that the
25 scope of hearings should be clearly established by the panel early in the review
26 process and more strictly adhered to.

1 4.3 Standing/funding for interveners (ToR, section 2c)

2 Unlike most other energy regulators, the BCUC has no formal standing rules. The
3 Ontario Energy Board⁹ (**OEB**) and Alberta Utilities Commission¹⁰ (**AUC**) have what
4 are typical standing rules that require parties seeking to intervene to demonstrate a
5 substantial interest in the proceeding, that they could be directly or adversely
6 affected by the application or have expertise that the tribunal believes is relevant.
7 BC Hydro's experience has been that intervenor standing has not generally been an
8 issue for its applications. The BCUC requests, and parties seeking intervention
9 generally identify, the interests the party has in the particular BC Hydro proceeding
10 and thus the grounds for their intervention. While the BCUC has rarely denied a
11 party standing to participate in a BC Hydro-related proceeding, in the one case
12 where BC Hydro challenged a party's right to participate in a hearing, the BCUC
13 requested submissions from the parties and in the end denied standing on the basis
14 that the party in question did not receive service from BC Hydro.¹¹

15 With regard to funding of interveners, BC Hydro generally has no concerns with the
16 existing framework consisting of section 118 of the *UCA* and the BCUC Participant
17 Assistance/Cost Award (**PACA**) Guidelines,¹² revised in 2007, and believes that it
18 functions well. BC Hydro notes that as with the BCUC's general process for
19 establishing guidelines, the BCUC circulated a draft of the PACA Guidelines to
20 public utilities and interested parties for comment. The BCUC also circulates for
21 BC Hydro's comment PACA requests from interveners with respect to BC Hydro

⁹ OEB Rules of Practice and Procedure, revised 24 April 2014, Rule 22.02 ("person applying for intervenor status must satisfy the Board that he or she has a substantial interest in the proceeding ..."); copy at http://www.ontarioenergyboard.ca/oeb/Documents/Regulatory/OEB_Rules_of_Practice_and_Procedure.pdf.

¹⁰ AUC Rules of Practice, Rule 001, Paragraph 24(3)(d) ("submission must be made in writing and contain ... a concise statement indicating ... the manner in which the intervenor's right may be directly or adversely affected by the decision of the Commission on the application"); copy at <http://www.auc.ab.ca/acts-regulations-and-auc-rules/rules/Documents/Rule001.pdf>.

¹¹ The sole BC Hydro-related example concerned Zellstoff Celgar Limited Partnership's (**Celgar**) request for standing in the Conifex Power Inc. EPA review. After BC Hydro and a customer party both challenged Celgar's standing, the BCUC per Letter L-10-12 dated 28 February 2012 denied Celgar standing.

¹² BCUC Order G-72-07; Copy at http://www.bcuc.com/Documents/Guidelines/2011/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf.

1 applications and usually acknowledges BC Hydro's comments and takes them into
2 consideration when making PACA awards (BC Hydro has in few cases challenged a
3 PACA request). BCUC panels have discretion to award full or partial costs of
4 participation and recently have emphasized the party's contribution (or lack thereof)
5 to the proceeding when making PACA awards.

6 **4.4 Alternative review processes, including expedited hearing**
7 **processes/negotiated settlement processes/Involvement of**
8 **the BCUC in alternative regulatory processes (ToR, sections**
9 **2dii) and 2diii)**

10 BC Hydro is supportive of alternative review processes.

11 The BCUC introduced the SRP Guidelines in 2012¹³ as a streamlined approach for
12 smaller applications with less complex issues. The intent of the SRP is to “reduce
13 multiple rounds of IRs by bringing stakeholders together for presentation and
14 question and answer period”.¹⁴ BC Hydro has limited experience with SRPs, having
15 only used it once for its 2013 Residential Inclining Block rate (**RIB**) re-pricing
16 application. BC Hydro's experience was positive; the commissioner made a ruling
17 from the bench, and in contrast to the IR process, the SRP provides incentive to ask
18 targeted questions addressed at material application issues due its nature (for
19 example, the time limit – ½ day set aside for the 2013 RIB SRP). BC Hydro is likely
20 to request SRPs for smaller applications with a relatively narrow subject matter. In
21 addition, BC Hydro notes that Part III (i) of the SRP Guidelines provides that SRPs
22 can be used for portions of applications. Thus SRPs could be used for portions of
23 more complex applications that are severable from the overall application.

24 BC Hydro has more experience with NSPs, and also views NSPs favourably. NSPs
25 can offer significant benefits to the regulatory review process, including flexibility and

¹³ BCUC Order G-23-12; copy available at http://www.bcuc.com/Documents/Guidelines/2012/DOC_30215_03-12-Streamlined%20Review%20Process%20Guidelines.pdf.

¹⁴ BCUC letter dated 28 March 2012 concerning comments received on draft SRP Guidelines, Log. No. 38898, page 3.

1 relatively lower costs. The Revised 2012 NSP Guidelines¹⁵ are an improvement over
2 the 2001 Guidelines in a number of ways, including providing for a demarcation of
3 BCUC staff advocacy and advisory roles, and removing outdated language that cast
4 NSPs as a mere tool to be used to compliment the traditional regulatory review
5 process.

6 Alternative review processes are not confined to processes that have as their
7 purpose the binding resolution of disputes. More broadly speaking, alternative
8 review processes include any process or discussion forum that improves the
9 effectiveness and efficiency of the overall regulatory process. Experience at the
10 BCUC to date is mixed given the role of BCUC staff:

- 11 • Workshops, whose general purpose is to educate and inform. As noted above,
12 BC Hydro's general practice is to hold pre-application workshops. The BCUC
13 should be encouraged to incorporate workshops into the hearing process itself.
14 Workshops could be held after a first round of IRs to improve overall knowledge
15 and foster discussions that are less confrontational, with the goal of avoiding or
16 reducing the number of second round IRs or address specific application
17 issues. The particular BCUC panel reviewing the application could attend
18 aspects of the workshop, but to encourage frank and open discussion there
19 should be a discussion group portion that is not attended by the BCUC panel.
- 20 • Pre-hearing or technical conferences. BC Hydro understands that the OEB
21 uses technical conferences for complex hearings as a hybrid SRP and pre-
22 hearing process at which disputes over appropriateness of IRs, including staff
23 IRs, can be resolved and witnesses are questioned in the presence of other
24 parties, with a transcript produced.

¹⁵ BCUC Order G-11-12; copy available at
http://www.bcuc.com/Documents/Guidelines/2001/DOC_3934_BCUC-2012-NSP-Guidelines.pdf.

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- 1 • Issues meetings prior to a pre-hearing or technical conference, where the utility
2 and interveners could discuss resolution of issues or narrowing the list of issues
3 to those that have a low probability of resolution.

4 **4.5 Generic Proceedings on specific issues affecting more than**
5 **one utility (ToR, section 2div) and Coordinated regulatory**
6 **processes (ToR, section 2dviii)**

7 BC Hydro's only experience with generic proceedings has been through its limited
8 intervention in Generic Cost of Capital and Mandatory Reliability Standard
9 Assessment Report reviews. BC Hydro has no comments on this subject other than
10 to state that utilities should not be forced into generic hearings or BCUC mandated
11 co-ordinated review processes solely because there is a view that greater co-
12 operation between utilities is desired.

13 **4.6 Role, effectiveness and use of guidelines (ToR, section 2dvi)**

14 BCUC guidelines have a role to play in BCUC processes and generally work well. As
15 noted above the BCUC's practice has been to consult on development of guidelines
16 through a notice and comment process. BC Hydro commends the BCUC for its
17 consultation and engagement processes whenever there has been a revision to
18 existing guidelines or the development and issuance of new guidelines. BC Hydro's
19 experience through updated NSP Guidelines and the SRP Guidelines development
20 process is that the BCUC considers views of parties and strikes a good balance
21 between those views in developing the final version.

22 BCUC guidelines generally fall into two general categories:¹⁶ (1) review process
23 guidelines – for example, the SRP Guidelines and the NSP Guideline described
24 above; and (2) application information guidelines such as the BCUC's 2010 CPCN

¹⁶ Refer to the BCUC's website at <http://www.bcuc.com/Guidelines.aspx> for a listing of BCUC guidelines and rules.

1 Application Guidelines¹⁷ and the 2010 First Nations Information Filing Guidelines for
2 Crown Utilities.¹⁸ BCUC guidelines are not binding, and as a result it is important for
3 the BCUC to consider exceptions to its general approach. Generally speaking the
4 BCUC has been flexible in its approach regarding the first category of guidelines.
5 BC Hydro's experience with the SRP process was positive and this was due in part
6 to the commissioner's flexibility such as rendering a ruling from the bench. The
7 second category of guidelines is important in terms of conveying BCUC information
8 expectations to public utilities. BC Hydro used the CPCN Guidelines to resist one
9 intervener's attempt to turn both the Ruskin Dam and Powerhouse Upgrade Project
10 CPCN and the John Hart Generating Station Replacement (**JHT**) Project CPCN
11 Applications proceedings into far-flung capital plan, climate action plan and water
12 use planning process reviews.

13 The BCUC also issues Rules,¹⁹ which in contrast to guidelines BC Hydro takes to be
14 mandatory, and practice directives such as the Confidential Practice Directive for
15 Confidential Filings²⁰ issued pursuant to section 11 of the *Administrative Tribunals*
16 *Act*²¹ which BC Hydro has found useful by bringing structure to requests for and
17 adjudication of confidentiality.

18 **4.7 Application cycle times and establishing timelines for reviews** 19 **and decisions (ToR, section 2dvii)**

20 Noticeable by its absence is any kind of guideline for BCUC decision-making
21 timelines. (The ESC Rules state generally in the 'introduction' that "the Commission
22 intends to review Energy Supply Contracts expeditiously..."). BC Hydro is aware that

¹⁷ BCUC Order G-50-10; copy available at http://www.bcuc.com/Documents/Guidelines/2010/DOC_25326_G-50-10_2010-CPCN-Application-Guidelines.pdf.

¹⁸ BCUC Order G-51-10; copy available at http://www.bcuc.com/Documents/Guidelines/2010/DOC_25327_G-51-10_2010-First-Nations-Information-Filing-Guidelines.pdf.

¹⁹ For example, Rules for Energy Supply Contracts for Electricity (**EPA Rules**), BCUC Order G-61-12; copy available at http://www.bcuc.com/Documents/Guidelines/2012/DOC_4237_G-61-12_BCUC%202012_Energy_Supply_Contract_Rules_for_Electricity.pdf.

²⁰ Copy available at http://www.bcuc.com/Documents/MiscDocs/2007/DOC_16604_Confidential_Filings_Practice_Directive.pdf.

²¹ S.B.C. 2004, c.45.

1 the BCUC has an informal ‘guiding principle’ that decisions are to be issued within
2 90 days of close of argument. At times the BCUC has met this 90 day goal – for
3 example with respect to the JHT Application, where argument concluded at the end
4 of November 2012 and a decision was issued at the beginning of February 2013.
5 However, there have been several instances in the last few years where decisions
6 have been delayed well beyond the 90 day period, causing regulatory uncertainty for
7 both BC Hydro and interested parties. A recent example is BC Hydro’s 2012
8 Application to Amend Tariff Supplement No. 74. The Application was filed in
9 November 2012 and reviewed through a written process that concluded in July
10 2013, but a decision was not issued until February 2014.

11 Few jurisdictions in North America establish legislated timelines for the issuing of
12 public utility commission decisions. BC Hydro understands that various laws and
13 regulations require the California Public Utilities Commission (**CPUC**) to: (1) issue
14 certain draft rate setting and other decisions within a 60 to 90 day timeline from
15 submission date to the filing of a draft decision; and (2) adjudicatory proceedings
16 requiring oral hearings are to be resolved within 12 months of initiation.²² More
17 jurisdictions espouse instead non-legislated public utility commission decision
18 timelines. BC Hydro understands that the AUC publicly adopted performance
19 measures of rendering: 100 per cent of ‘market’ decisions within 90 days from the
20 close of the record; 100 per cent of need and facility decisions within 180 days of an
21 application being deemed complete and other review process timelines.²³ The AUC
22 performance measures set out different timelines for different types of applications.

23 BC Hydro is not in favour of legislated deadline(s) for BCUC decisions as it
24 recognizes that some applications are complex, may expand in scope after the

²² California Senate Bill 960 (1996) and Assembly Bill 1735 (2004) establish several deadlines. Refer generally to California State Auditor Report 2006-406, summarized at <https://www.bsa.ca.gov/pdfs/sr2005/2003-103.pdf>.

²³ AUC Business Plan:2012-2013 to 2014-2015, performance measure 1a, page 5; copy available at http://www.auc.ab.ca/about-the-auc/who-we-are/Documents/AUC_Business_Plans/2012-2013%20to%202014-2015%20AUC%20Business%20Plan.pdf. See also AUC Rules of Practice, Rule 011.

1 application has been filed or may have policy implications for the B.C. Government
2 that require careful deliberation. The *UCA* empowers the BCUC to establish its own
3 procedures subject to statute and common law rules respecting fairness and due
4 process. BC Hydro recommends a guideline or performance measure for application
5 review timelines as follows: (1) 100 per cent of BCUC decisions are issued within
6 one year of utility application submission; and (2) 100 per cent of BCUC decisions
7 are issued within 90 days of the close of arguments. BCUC panels should be given
8 the flexibility to request additional time in extraordinary circumstances. Providing for
9 some flexibility is not unusual; for example, for *Canadian Environmental Assessment*
10 *Act, 2012*,²⁴ Review Panels are typically required to issue their reports 90 days after
11 the close of argument but given the flexibility to request additional time with reasons.

12 The development of a written guideline or performance measure would provide a
13 metric against which the BCUC's performance can be compared and may act as an
14 incentive to ensure decisions are issued in a timely manner. A written performance
15 measure should also be accompanied by a requirement that the BCUC provide in its
16 Annual Report to the LGIC metrics as to how successful the BCUC has been in
17 meeting its decision timelines.

18 **4.8 Opportunities to make hearing processes more efficient and** 19 **focused (ToR, section 2dv)**

20 Generally the IR process has some limitations: (1) parties write IRs separately,
21 resulting in duplication. In complex applications the practice has been to stagger the
22 IR process, with BCUC staff IRs issued prior to intervener IRs. However, while
23 helpful for interveners, this does not address the problems with BCUC staff IRs
24 outlined above; and (2) there is little cost to asking large numbers of IRs. SRPs offer
25 one solution, and indeed the use of a SRP for BC Hydro's 2013 RIB re-pricing
26 application avoided a second round of IRs. BC Hydro has considered other possible
27 solutions summarized here:

²⁴ S.C. 2012, c.19, s.52.

-
- 1 • Better management direction and oversight of BCUC staff and IRs through,
2 among other things, the appointment of an executive director of staff position
3 and more effective use of BCUC counsel. Refer to section 5.2 below.
 - 4 • The exercise of greater control over identification of issues to be addressed in
5 the particular review process. Use of OEB-type technical conferences
6 potentially avoids less timely and potentially duplicative second or third rounds
7 of IRs. Such conferences may also be more effective than IRs in clarifying
8 technical issues.
 - 9 • The development of a written guideline or performance measure for application
10 review timelines as discussed above in section 4.7 of this submission.

11 **5 BCUC Organization Topic**

12 **5.1 Review of ratepayer advocate models in other jurisdictions** 13 **and implications for the role of staff (ToR, section 3a)**

14 **5.1.1 Utility Commission Advocate**

15 In many jurisdictions, an independent organization acts as a consumer advocate on
16 behalf of utility residential and sometimes small commercial customers. Usually, the
17 consumer advocate consists of a permanent office with a permanent staff. This is
18 the case with Alberta's utility consumer advocate,²⁵ New Brunswick's public energy
19 advocate,²⁶ and about 30 U.S.²⁷ states such as California, Wyoming, Pennsylvania,
20 New Hampshire, etc. In Newfoundland and Labrador, the LGIC appoints a consumer

²⁵ <http://www.ucahelps.alberta.ca/about.aspx>. Schedule 13.1 of the Alberta *Government Organization Act*, R.S.A. 2000, G-10 establishes the Office of the Utilities Consumer Advocate and sets out its responsibilities. The Alberta Utilities Consumer Advocate represents the interests of Alberta residential, farm and small commercial consumers of electricity and natural gas in regulatory proceedings. Section 7 of the *Government Organization Act*, Ministerial Order 015/2209 establishes the Utilities Consumer Advocate Advisory Board and sets out the Board's mandate in providing advice to the Minister of Service Alberta.

²⁶ http://www2.gnb.ca/content/gnb/en/departments/energy/energy_blueprint/content/advocate.html.

²⁷ See Table 1 in Adam R. Fremeth et al.'s article entitled "The impact of consumer advocates on regulatory policy in the electric utility sector", *Public Choice*, Volume 157, Nos. 3-4, December 2013; <http://sites.ivey.ca/energy/files/2014/02/Fremeth-Holburn-Spiller-Impact-of-Consumer-Advocates-Public-Choice-2013.pdf>.

1 advocate on an *ad hoc* basis for particular applications,²⁸ with experts retained on an
2 as needed basis and a budget approved by the Newfoundland and Labrador
3 Minister of Justice in matters pertaining to electricity.

4 BC Hydro takes no position on whether or not a consumer advocate should be
5 instituted in B.C., but makes the observation that a consumer advocate could
6 address two BCUC ‘structure issues’ – ratepayer representation and BCUC staff
7 roles:

- 8 • One advantage of a consumer advocate is that all residential, and if commercial
9 representation is seen as an issue, commercial consumers are represented.
10 For BC Hydro applications, there are groups representing important segments
11 of its residential customers such as low income and environmentally-minded
12 residential customers. However, there is no one group that represents a broad
13 cross section of residential consumers.
- 14 • With respect to BC Hydro filings, BCUC staff often plays a dual role - providing
15 advice to BCUC panels and advocating on behalf of consumers or the ‘public
16 interest’, resulting at times in a lack of participant role clarity. The BCUC
17 addressed this issue to a certain extent in the NSP context, which is where the
18 dual role was most problematic, through its 2012 NSP Guidelines. A consumer
19 advocate is a means by which BCUC staff could be focused on an advisory role
20 (as a resource to interveners, especially to those to whom significant financial
21 resources are not available or those that do not have extensive experience in
22 the regulatory field; perform an education role, enabling review participants to

²⁸ Pursuant to section 117 of the Newfoundland and Labrador *Public Utilities Act*, R.S.N.L. 1990, c. P-47. For example, the Newfoundland and Labrador LGIC appointed a consumer advocate to represent the interests of “domestic and general service customers” with respect to the Newfoundland and Labrador Public Utilities Board’s review of the proposed Muskrat Falls generating facility as the least cost option. Recently, the Newfoundland and Labrador LGIC appointed the consumer advocate for a standing one year term; <http://www.justice.gov.nl.ca/just/departement/consumeradvocate.html>. The Newfoundland and Labrador consumer advocate prepares annual ‘activity reports’ a copy of the activity report for 1 April 2012 to 31 March 2012 can be found at http://www.justice.gov.nl.ca/just/publications/2011-2012/ca_annual_report_2011_12.pdf.

1 address the issues before them; and provide technical assistance to BCUC
2 panels) because staff would not have any need or basis to undertake an
3 advocacy role. BC Hydro would expect that BCUC staff would not duplicate the
4 efforts of a consumer advocate.

5 There are a number of considerations:

- 6 • Independence – How to ensure the consumer advocate is independent to
7 conduct interventions according to his or her discretion, and how to provide the
8 consumer advocate with some autonomy over its budget and staffing resources
9 while ensuring there is accountability for costs. BC Hydro notes that many
10 consumer advocate offices are part of the Office of Attorney General.²⁹
11 Sometimes terms are set for the holding of the consumer advocate office.
- 12 • Costs - A dedicated consumer advocate would need to develop a level of
13 expertise to effectively represent residential and perhaps commercial
14 consumers. This would likely require a permanent independent office, with
15 attendant costs. In addition, the consumer advocate would need to be
16 adequately funded to attract and retain talent.
- 17 • Interplay with interveners - Most consumer advocates represent residential and
18 small commercial customers. A question is whether the appointment of a full-
19 time consumer advocate would supplement, or replace, the existing system of
20 PACA funded interveners who may have different priorities than the consumer
21 advocate.

22 **5.1.2 Role of BCUC Staff**

23 If a consumer advocate model is not followed, the role of BCUC staff still needs to
24 be considered. BCUC staff have an important non-advocacy role of providing

²⁹ See, for example, the Pennsylvania Office of Consumer Advocate is housed in the Office of Attorney General; http://www.oca.state.pa.us/information_links/brochure.htm. The California Division of Ratepayers Advocates is a division of the CPUC. BC Hydro believes that this model is flawed as it difficult to see how a consumer advocate can be independent if it is part of a public utility commission.

1 technical and policy expertise and analysis to BCUC panels. On a number of
2 occasions BCUC staff have asserted that they represent the public interest. (This is
3 not the same as taking an adversarial position against a party;³⁰ in BC Hydro's
4 submission the case law is clear that if BCUC staff take an adversarial position they
5 cannot be a BCUC panel advisor. These two roles are incompatible).³¹
6 Nevertheless, where BCUC staff assert they represent the public interest, BC Hydro
7 submits it is consistent with and indeed a requirement of the duty of fairness that
8 BCUC staff positions should be stated clearly on the public record so parties can
9 respond to them. In addition, as described in the next section BC Hydro is of the
10 view that better oversight of BCUC staff is required.

11 **5.2 Organizational structure (ToR, section 3ci-v)**

12 BC Hydro sees four problems with the current BCUC organizational structure as
13 follows.

14 **5.2.1 Chair/Chief Executive Officer (CEO)/Executive Director**

15 Subsection 2(5) of the *UCA* provides that the Chair is the CEO of the BCUC and
16 “has supervision over and direction of the work and the staff” of the BCUC. In
17 BC Hydro's view, the Chair as CEO should be undertaking more of a strategic role in
18 the direction of the BCUC, rather than the administrative actions that appear to be
19 the current focus. BC Hydro also believes that the Chair should, as part of BCUC
20 panels, decide more applications, particularly politically sensitive applications,
21 because under administrative law ‘he who hears must decide’.

22 BC Hydro strongly recommends re-institution of an executive director of staff
23 position to assist the Chair with supervision and direction of the work of BCUC staff.
24 Such a position previously existed at the BCUC. One role of the executive director
25 would be to ensure Staff IRs are critically and independently reviewed and that their

³⁰ *Omenieca Enterprises Ltd. v. British Columbia (Minister of Forests)* (1992) 7 Admin. L.R. (2d) 95 (B.C.S.C.) at pages 99-100.

³¹ *2747-3174 Quebec Inc. v. Quebec* (1996), 42 Admin. L. R. (2d) 1 at page 25.

1 quality and usefulness in advancing an understanding of the application at hand is
2 demonstrated before they are issued. This should reduce the number of
3 unnecessary and duplicative IRs, and help to improve the efficiency and
4 effectiveness of the BCUC's overall review process. In addition to staff oversight and
5 supervision, an executive director could help ensure that BCUC decisions are
6 reasonably consistent with previous decisions (subject to specific policy changes by
7 the B.C. Government). An executive director could be appointed without the need for
8 any *UCA* amendments as section 7 of the *UCA* gives the BCUC the authority to
9 retain officers and employees it considers necessary.

10 **5.2.2 Commissioners**

11 Commissioners are appointed by the LGIC “after a merit based process” (subsection
12 2(1) of the *UCA*). BC Hydro notes that currently, with the exception of the Chair, all
13 of the commissioners are part-time. This is out of line with the complexion of many
14 public utility commissions.³² Some jurisdictions prescribe the number of full-time
15 commissioners. For example, the Newfoundland and Labrador *Public Utilities Act*³³
16 in subsection 6(3) mandates four full-time commissioners. BC Hydro cautions
17 against amending section 2 of the *UCA* to prescribe the number of full-time
18 Commissioners because it is unclear to BC Hydro that there is some optimum
19 number of full-time commissioners. In addition, there is nothing in section 2 of the
20 *UCA* or otherwise preventing the LGIC from appointing more full-time
21 commissioners. Although BC Hydro suggests that it might be desirable to have
22 some full-time commissioners to, among other things, maintain reasonable
23 consistency between decisions, BC Hydro recognizes that the majority of
24 commissioners will likely be part-time. All commissioners should have an excellent
25 knowledge of the industry that they are regulating, and should bring legal,
26 engineering, accounting or finance experience. The requisite experience should be

³² See for example, the make-up of the OEB (four full time commissioners not including the Chair/CEO, and six part-time commissioners); <http://www.ontarioenergyboard.ca/OEB/Industry/About+the+OEB/Who+We+Are>.

³³ *Supra*, note 28.

1 gauged against the complexion of other commissioners, and not just on an individual
2 basis. The Newfoundland and Labrador *Public Utilities Act* in subsection 6(3)
3 provides that the LGIC consider the need of the Newfoundland and Labrador Board
4 of Public Utilities to be composed of commissioners who have “expertise in law,
5 engineering, accountancy or finance”. A change to section 2 of the *UCA* along these
6 lines may have merit.

7 **5.2.3 BCUC Counsel**

8 BC Hydro believes that the BCUC needs to make better use of legal counsel. There
9 is no staff counsel, and this is not likely to be necessary as the BCUC has access to
10 experienced private practitioners. BC Hydro believes that legal counsel could be
11 used to vet and review draft IRs, particularly on large and complex applications,
12 again with the purpose of discarding IRs that do nothing to advance the
13 understanding of the application and the policy issues that may need a decision.

14 **5.2.4 PMCC**

15 BC Hydro recommends a review of the PMCC, created as a separate organization in
16 the BCUC in response to the Administrative Penalties Regulation. PMCC was set up
17 without any prior consultation with regulated utilities and consists of separate staff
18 and separate office facilities. While it is useful to have one point of contact that is
19 experienced and can discuss compliance filings, BC Hydro questions whether
20 PMCC’s compliment of three people and a separate department are necessary or
21 cost effective. More generally, the Administrative Penalties Regulation should be
22 reviewed. The Administrative Penalties Regulation was enacted in 2012, and gives
23 the BCUC significant new powers to impose monetary penalties and remedial
24 orders. BC Hydro understands that the genesis of the Administrative Penalties
25 Regulation relates to natural gas marketer behaviour, but in any event BC Hydro
26 submits that other existing *UCA* provisions provide the BCUC with sufficient
27 authority and flexibility to supervise public utilities and carry out its regulatory
28 function.

5.3 Efficiency (value for money) and effectiveness of operations and performance (ToR, section 3di-iii); Hiring and compensation of BCUC staff and Commissioners, and staffing levels (ToR, section 3b)

As noted above, BC Hydro has concerns with the process that the BCUC followed in setting the F2015 levy. BC Hydro recently received the BCUC’s letter and order setting out its F2014/2015 budget and levies for the individual public utilities regulated by the BCUC. The BCUC’s F2015 budget increased 26 per cent in one year. This increase was not communicated to BC Hydro prior to the BCUC direction to pay, nor did the BCUC engage with any of the regulated utilities on its F2015 budget and the expected increases prior to issuing its F2015 levy order.³⁴

BC Hydro’s levy has increased each year as follows:

Fiscal Year	BC Hydro levy \$	\$ increase	% increase	BCUC Full Time Staff (including Chair)
2015	2,851,792	586,563	26	40 (assuming vacancies filled)
2014	2,265,229	234,251	11.5	37
2013	2,030,978	586,563	38	36
2012	1,470,455			30

These amounts are for BCUC operating costs and do not take into account costs incurred during hearings for external consultants, commissioners, hearing rooms, etc. While these increases may be justified they have not, in BC Hydro’s experience, resulted in more efficient hearing processes and/or better decisions.

Nevertheless, BC Hydro supports examination of BCUC compensation levels to recruit and retain qualified individuals. The BCUC competes for professional staff (and commissioners) with public utilities and the electricity and natural gas industry more generally, accounting firms and other regulators³⁵. Full-time commissioners with relevant experience would need to be paid more than part-time commissioners.

³⁴ BCUC Order G-64-14; copy available at <http://www.bcuc.com/OrderIndex.aspx>.

³⁵ The BCUC’s compensation levels for the CEO, Directors and Commissioners are set out at <http://www.bcuc.com/contactstaff.aspx>.

- 1 A compensation package that includes performance-based salary increases tied to
- 2 among other things timely rendering of decisions should be looked at. BC Hydro also
- 3 wonders if, overall, costs would necessarily increase as the attraction and retention
- 4 of high quality staff could result in a reduction in the use of consultants.
- 5 All of which is respectfully submitted.