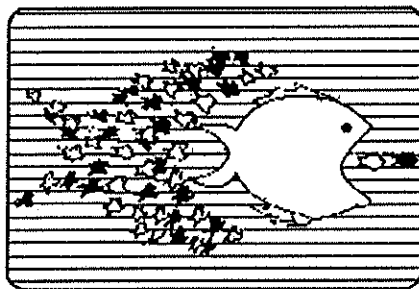


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June 9, 2014

BCUC Core Review Task Force

Via Email: bcucreview@gov.bc.ca.

Re: BCUC Core Review – Submission to Core Review Panel

The BC Public Interest Advocacy Centre is a non-profit law office which has been representing the interests of BC's residential utility customers since 1981. At present, our regulatory client groups include the British Columbia Old Age Pensioners Organization, Active Support Against Poverty, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, Tenant Resource and Advisory Centre, and Together Against Poverty Society. Together these organizations represent groups of British Columbians who tend to have low and/or fixed incomes, and for whom energy costs represent a significant portion of their monthly expenses. In addition to representing residential utility customers, the BC Public Interest Advocacy Centre acts as legal counsel for groups and individuals in litigation designed to bring about systemic change for the benefit of marginalized populations.

We make this submission with respect to the BCUC Core Review currently being undertaken by the Task Force.

1. BCUC Processes

(a) Timeliness, Efficiency, and Effectiveness

In our view, BCUC processes are already quite timely, efficient and effective. The ability of the BCUC to determine the type of process to be used for an application and to control the timetable for the process help ensure the processes are determined in a timely way using the most efficient process available.

There is always a trade-off in judicial and quasi-judicial processes between timeliness and efficiency, on the one hand, and thorough, thoughtful and considered decision making on the other hand. Our superior court system uses a model allowing for a thorough exploration of the facts and issues, and deeply considered decisions. This results in a lengthy and expensive process. By contrast, many of BC's administrative tribunals use a model which allows only very limited, if any, evidence-gathering and extremely truncated hearing processes. For example, a typical Residential Tenancy Branch hearing is conducted over the phone in one hour or less,

often with decisions rendered the same day. This model allows for a high volume of decisions to be made at low cost to the parties and to the administration, but it does not result in a thorough review of the facts and issues, or in highly considered decision making.

In our view, the “efficiency” of the process is to be traded off against the gravity or magnitude of the decision to be made, or the degree of public controversy inherent in the proceeding. It is not appropriate to focus too closely on the efficiency of the process, at the expense of a thorough review and thoughtful decision, especially when millions or hundreds of millions of ratepayer dollars are at stake.

Additionally, applications are often lengthy and technical, sometimes including appendices that are hundreds of pages long. BCPSO is in favour of fulsome applications that provide all necessary information; however, the resulting proceedings then need to be on long enough time lines to allow interveners with limited resources and BCUC staff to properly review and analyze the materials.

With respect to effectiveness, the BCUC is (or should be) an expert, independent decision making body. The fact that a utility, or indeed the Provincial government, may disagree with a BCUC decision does not make it “ineffective”. Indeed, we have watched BC Hydro slide deeper into debt amid rising rates since the Province assumed much of the role as its regulator.

(b) Cost of Reviews

In our view, the ability to control the cost of regulatory reviews rests largely with the utilities. The vast majority of applications are brought by the utilities who decide how the application will be presented and what evidence will be provided in support of it. However, BCUC staff and intervener IRs do certainly also influence the cost and duration of reviews.

To the extent the BCUC or interveners want the utility to provide a particular type of evidence in a particular type of application, it may be possible for the BCUC to develop detailed guidelines identifying this evidence. The existence of such guidelines may reduce the number of IRs as evidence sought could be provided with the application. Another option is for the BCUC to simply impose a limit on the number of IRs that can be asked in a given proceeding, with an option for BCUC staff or interveners to request the ability to ask additional IRs. This is similar to the time limits imposed on examinations for discovery in the BC Supreme Court Civil Rules. In our view, the ability to follow-up on significant IR responses is of critical importance.

It appears to us that the utilities have an unlimited ability to spend money on regulatory processes — expenditures which are ultimately at the ratepayers’ expense. By contrast, the funding available to intervener groups is severely restricted, not guaranteed and often delayed until long after the process is complete. This creates an enormous imbalance of resources between the utilities and the interveners who represent what are often opposing interests.

Although we do not know how many utility employees are spending how much time working on any particular application behind the scenes, at in-person proceedings (including simplified proceedings such as Streamlined Review Processes and informal pre-application workshops), there are often a large number of utility staff members present, many of whom do not appear to have an active role in the proceeding. It may be appropriate to restrict (other than through revenue requirement applications) the amount of money utilities are able to spend on regulatory

proceedings both in order to avoid waste of ratepayer money and to help even the playing field between the utilities and the interveners.

(c) Funding for Intervenors

BCPSO supports review of the intervener funding model.

In our view, the Participant Assistance/Cost Award (“PACA”) Guidelines are both overly vague and unfairly restrictive with respect to cost awards. First, there are no guidelines for written hearing processes. This is a significant gap given that most BCUC proceedings are conducted wholly or partly in writing.

Second, with respect to oral hearings, the number of days allowed under the PACA Guidelines is inadequate – particularly given the imbalance of resources between intervenors and the frequently high volume of materials provided by the utilities. Two preparation days per proceeding day simply does not reflect the actual preparation time required for oral proceedings. Similarly, with respect to written hearings, the number of days for which PACA funding is allowed typically underrepresents the time actually required to review and comment on an application by a factor of 3 or 4.

Third, intervenors in BCUC proceedings have no certainty whether they will be approved for any cost award, or if so, how much that award will be. In larger processes, intervenors submit a budget estimate early on in a proceeding, and receive a review letter from BCUC staff advising the likelihood that the budget will be deemed reasonable at the end of the proceeding. However, these advice letters are not binding on the Commission Panel in determining participant entitlement to a (full or partial) cost award. This is particularly problematic with respect to retaining third party experts and consultants, many of whom are unwilling to work for something as ephemeral as the possibility of payment several months down the road. Further, often experts must be retained before PACA advice letters are issued, resulting in even less certainty.

Fourth, even if there was certainty that an award would be made, it would still be difficult for intervenors to retain experts when those experts must wait so long to be compensated for their work. In addition to their time, experts generally pay their expenses out of pocket (i.e., when they are required to travel to provide evidence in a proceeding). Intervenors, such as the BC Public Interest Advocacy Centre, are not able to pay experts’ expenses until proceedings conclude and cost award applications are decided. Nor are we able to guarantee payment of any kind to the experts we retain. High quality experts are often not willing to work on these terms. This in turn compromises the quality of the information before the Commissioners.

Finally, we understand that the daily rates allowed under the PACA guidelines have not increased for over a decade, and are now significantly out of step with fees charged by most private counsel and expert consultants/witnesses. In our view, it is appropriate to review the rates allowed.

These issues – vagueness, uncertainty and delays in awards -- are particularly problematic in lengthy processes. For example, in the forthcoming BC Hydro Rate Design Application (RDA), pre-application workshops started in early May 2014, but the actual RDA will not be filed until mid-2015—obviously, this filing will be followed (at a minimum) by information requests and a hearing, as well as an indeterminate period of time before the decision is made and released. While a timeline approaching two years may be necessary for some proceedings, it would be of significant assistance to intervenors if opportunities for advance cost award approvals and /or

interim funding were made more readily available. We note that the current PACA Guidelines allow for Interim Approval for funding to retain experts, but such approvals are reserved for "exceptional circumstances" (PACA Guidelines, Appendix A to Order G-72-07, p.3). All recent requests made by the BC Public Interest Advocacy Centre for advance funding have been rejected.

2. Intervener role

During our meeting with the Task Force, we were asked for our thoughts on the creation of a government appointed and funded consumer advocate similar to the Utilities Consumer Advocate in Alberta, which is a provincial government agency.

In our view, the role of advocating for residential ratepayers in BC should remain independent of government. This separation has several advantages.

First, in the case of BC Hydro, the Province already acts as legislator, landlord, shareholder, policy maker and often also as regulator. Assuming these many roles has already placed the Province in a conflict of interest position. For example, the Province has set for itself a rate of return significantly in excess of that allowed to BC's investor owned utilities by the BCUC, even though BC Hydro undoubtedly faces the lowest risk. As shareholder, the interests of the Province are in direct conflict with the interests of residential utility customers. For a governmental organization to also assume the role of consumer advocate simply extends and exacerbates this conflict.

Second, in our view, a government agency would be less accessible to residential utility customers, and is unlikely to enjoy the level of trust given to an independent organization. The BC Public Interest Advocacy Center has a longstanding connection with BC's low income advocates and marginalized communities. We work with these groups on an on-going basis both in and out of the regulatory arena, and frequently provide their clients and constituents with advice and assistance relating to utility matters that are unrelated to BCUC proceedings. A newly created government office would not have these relationships, and it is unlikely to be able to develop them. Our relationships with low income advocates and community groups informs our work, and provides us with the opportunity to get instructions from ratepayers who are comfortable speaking candidly with us about their needs.

Finally, it is not clear to us whether the proposal is that residential ratepayers would be the only ratepayer group whose interests would be represented by a public agency, or whether a public agency would also assume the role of representing other customer classes, such as commercial, industrial, transportation, etc. customers. We assume the former, and question the fairness behind weighting the deck further against residential customers.

3. BCUC Staffing Models

In our view, current BCUC staff members do an excellent job, and we do not have concerns about the current staffing model. Staff assistance is essential not only to the BCUC Commissioners, but also to interveners like the BC Public Interest Advocacy Centre who do not have the resources to hire specialists in every area that may be relevant to an application (e.g., engineers, accountants, economists, etc.). In our experience, BCUC staff members are highly

competent at analyzing applications and highlighting areas of concern. We do not see a benefit to outsourcing these functions.

However, we believe it may be appropriate to provide a higher daily rate for part-time Commissioners in order to attract top talent. We note that hearing days at the BCUC tend to be long and to require significant work before and after hearing hours. The daily rate does not appear to take this into account

Sincerely,

BC Public Interest Advocacy Centre

A handwritten signature in cursive script, appearing to read "Tannis Braithwaite".

Tannis Braithwaite
Executive Director/Barrister & Solicitor