



13 June 2014

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

Dear Mr. Ostergaard and Members of the Task Force,

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

Further to the amended timetable set out by the Independent Task Force regarding the Government's independent review of the British Columbia Utilities Commission (BCUC), these are the initial comments of the BC Sustainable Energy Association (BCSEA) and the Sierra Club of BC (SCBC).

Thank you for the opportunity for BCSEA-SCBC's lawyer Bill Andrews and myself to meet with the Task Force on May 27, 2014 in Vancouver. I won't attempt to repeat here all the points that we made in the meeting. We understand that this submission will be posted publicly at www.empr.gov.bc.ca/EPD/Electricity/BCUC_Review/.

Following a description of the BCSEA and SCBC's interests regarding the BCUC in part I, comments are provided in part II using the headings in the Task Force's terms of reference.

I. BCSEA and SCBC

BCSEA is a non-profit association of citizens, professionals and practitioners committed to promoting the understanding, development and adoption of sustainable energy, energy efficiency and energy conservation in British Columbia. BCSEA has five chapters across B.C. and approximately five hundred individual and corporate members. Most of BCSEA's members are ratepayers of energy utilities that are regulated by the BCUC. BCSEA's goals include sustainable energy, energy efficiency and energy conservation in British Columbia.

SCBC is a non-profit organization of British Columbians from all walks of life who care about a broad range of environmental issues including climate change and clean energy. SCBC has six local groups and over 16,000 members and supporters across the province, most of whom are ratepayers of energy utilities that are regulated by the BCUC. SCBC focuses on a broad range of environmental issues including climate change and clean energy. The promotion of environmentally sustainable energy falls within SCBC's mandate.

BCSEA-SCBC intervene regularly in proceedings of the BCUC. BCSEA-SCBC's interests in this Review are as non-profit public interest environmental and energy policy organizations, and as representatives of their members' interests as ratepayers.

II. Comments

We begin with the observation that the task force's terms of reference may be seen as encompassing three levels of analysis:

- matters affecting the Commission's operation that are external to the Commission itself, such as requirements and powers established by provincial legislation and ministerial order,
- matters that are within the Commission's jurisdiction as an independent, quasi-judicial administrative tribunal, such as the content of Commission orders and decisions and the manner in which the Commission manages its own quasi-judicial proceedings, and
- matters within the Commission's management of itself as a government agency, such as planning, budgeting, spending, personnel, guidelines and policies.

1. A review of comparable utility regulators and models in other jurisdictions, along with key benchmarks.

BCSEA-SCBC await with interest the results of the Task Force's review of other utility regulatory models.

2. BCUC processes:

a. Existing levy funding model and possible alternatives;

We understand the "existing levy funding model" to refer to the mechanism by which public utilities regulated by the Commission are assessed a fee (levy) based on energy throughput, with the revenues contributing to the Commission's core operating expenses.

In addition to, and in conjunction with, the levy funding mechanism, the Commission routinely orders public utilities to pay for the costs of specific proceedings, typically where the public utility is the applicant or the subject of a complaint giving rise to the proceeding. These proceeding costs are payable to the Commission. In addition, under s.118 of the *Utilities Commission Act* and the Commission's *Participant Assistance Cost Award Guidelines*, the Commission routinely orders the public utility associated with a particular proceeding to pay specified amounts directly to registered intervenors to partially reimburse the intervenor for the cost of participating in the proceeding.

With reference to the panel's mandate to consider the "Existing levy funding model and possible alternatives," we understand that the main alternative would be some form of taxpayer-funded replacement of revenue that under the current model comes from ratepayers via rates paid to the regulated public utilities.

BCSEA-SCBC consider that in general it is appropriate for ratepayers of the public utilities, rather than taxpayers, to pay for a reasonable share of the cost of the regulation of the public utilities by the Commission. This approach results in the regulatory costs being allocated according to the principles of cost causation, which tends to support an economically efficient price signal for the regulated services.

If there are proposals for changes to the existing levy funding model then BCSEA-SCBC would ask for notice and an opportunity to comment.

b. Timeliness, effectiveness, efficiency and cost of reviews;

These comments are based on, and limited to, BCSEA-SCBC's experience with Commission proceedings regarding energy utilities. These comments do not address the Commission's proceedings regarding ICBC or Commission operations that do not involve proceedings, such as processing compliance filings and handling complaints that don't result in a proceeding.

For regulatory bodies, timeliness, effectiveness, efficiency and cost of reviews are matters that should be subject to the principle of continuous improvement. In that sense, one should never be satisfied with the past performance. Furthermore, regardless of past performance there are always new challenges in the future.

In that context, BCSEA-SCBC consider that the Commission has an appropriate attitude toward ongoing improvement of efficiency and effectiveness.

There is always room for improvement. BCSEA-SCBC would welcome a Commission-led efficiency and effectiveness initiative bringing together regulated utilities, intervenors and other affected parties. Having all the parties involved is important, because there is an inherent tendency for each party to propose measures for improved efficiency and perceived improved effectiveness that are at least neutral if not beneficial to the party's own interests; where other parties see such measures as negatively impacting their own interests, and *vice versa*.

c. Standing/funding for interveners;

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

The Commission allows parties to participate in proceedings without excessive formalism in terms of the legal status of the party itself. For example, in addition to parties that would have status to sue or be sued in court the Commission allows participation by unincorporated groups. This is has not been a problem.

In many proceedings the Commission allows a party to intervene merely upon identifying the party's interest in the proceeding, important issues and intended degree and nature of participation. In such proceedings there is no formal "standing" threshold. However, the Commission does exercise its authority to impose a standing requirement for status as an intervenor in certain proceedings, notably where there are or might be very large numbers of intervenors expressing the same or similar views. In the FortisBC Advanced Metering Infrastructure proceeding, for example, the Commission limited intervenor status to ratepayers of FBC and allowed individuals residing outside of the FBC service area to participate as interested parties. In BCSEA-SCBC's view this is an appropriate practice. Moreover, and more importantly, it is clear that anyone who disagreed with a Commission decision concerning status as an intervenor, interested party or letter of comment would be given a fair opportunity by the Commission to make representations and to have a considered decision on the point.

As noted above, funding for intervenors is provided under the *Participant Assistance Cost Awards Guidelines* pursuant to s.118 of the *Utilities Commission Act*. BCSEA-SCBC would not

able to participate in Commission proceedings without the availability of participant funding. The Commission's participant funding mechanism operates smoothly.

The rules are onerous for intervenors in certain respects. There is no decision to approve or disallow a participant cost award until after the conclusion of the proceeding. This is not infrequently more than one year after the proceeding has begun and the intervenor has started devoting resources at its own risk. The procedures include a PACA budget and a staff review letter, which informs the intervenor as to the extent of its risk but does not remove the risk itself. It is often difficult to retain suitable experts when there is even a theoretical possibility of disallowance of a cost award. One practical point: the tariff of *per diems* in the *PACA Guidelines* has not been amended for many years and should be updated to account for inflation.

d. Review processes:

d.i. Conventional oral and written public hearings;

The Commission uses conventional oral and conventional written public hearings for most proceedings. The Commission chooses between the oral and written form of public hearing based on appropriate criteria and input from parties.

The Commission uses well-run hearing room services, both in Vancouver and at times in other locations within B.C. The Commission's electronic filing system and document repository is exemplary.

d.ii. Alternative review processes, including expedited hearing processes and negotiated settlement processes;

The Commission has a long-established negotiated settlement process and a more-recently established streamlined review process. BCSEA-SCBC are satisfied that the Commission chooses to utilize these alternatives to conventional public hearing process based on appropriate criteria and input from parties.

d.iii. Involvement of the BCUC in alternative regulatory processes;

Regarding the Commission's negotiated settlement process, it is a Commission panel (commissioners designated for the proceeding) that determines whether an NSP will occur. In practice, the panel's decision to use an NSP is made with input from the parties. In the NSP, Commission staff participate and the Commission panel does not participate. In the nature of a negotiated settlement proceeding, the proceedings are confidential. There are appropriate guidelines for confidentiality undertakings by participants. If the parties to the NSP reach negotiated settlement agreement (NSA), the NSA is made public and provided to the panel along with written statements from NSP parties supporting or dissenting from the NSA. The panel then decides whether to accept the NSA and adopt it as a Commission order or to reject the NSA and to continue with the proceeding in a conventional manner, oral or written.

BCSEA-SCBC support the Commission's establishment of the NSP as an available alternative process. As noted above, the decision to use an NSP in a particular proceeding is made by the Commission panel upon input from the parties. BCSEA-SCBC have participated in several NSPs. They have no complaints about the NSP process itself. There have been discussions over the years about the appropriate role of Commission staff within the confidential portion of an

NSP process. These discussions often hinge on the content of the particular proceeding and indeed the particular individuals involved. BCSEA-SCBC are satisfied that any such issues are resolved appropriately.

Regarding the streamlined review process, BCSEA-SCBC participated in the Commission's consultation that led to the establishment of the SRP. They have participated in several SRPs. BCSEA-SCBC support the SRP as an available alternative process. It is a more efficient and more effective alternative to a written proceeding in suitable cases.

d.iv. Generic proceedings on specific issues that apply to more than one utility;

BCSEA-SCBC have not participated in the Commission's proceedings regarding return on equity, which are perhaps the main example of "generic proceedings on specific issues that apply to more than one utility." BCSEA-SCBC have no comment on the ROE proceedings.

BCSEA-SCBC have participated in the Commission's proceedings regarding FortisBC Energy Inc. and FortisBC Alternative Energy Services and competing utilities regarding thermal energy services, biomethane and natural gas for transportation. Those proceedings have now largely resolved the issues involved, noting that the Commission is finalizing guidelines for thermal energy services as well as a code of conduct and transfer pricing principles for FEI. The next stage will be implementation of these new guidelines and rules. BCSEA-SCBC submit that now would not be a useful time for external intercession. Rather, implementation should be allowed to unfold and be evaluated.

d.v. Opportunities to make hearing processes more efficient and more focused;

BCSEA-SCBC have a strong interest in Commission hearing processes being made more efficient and more focused. Efficient and focused proceedings are in the public interest. They are more accessible to members of the public. They result in better decisions. And they use less of society's scarce resources. In addition, on a pragmatic basis, PACA funding does not cover all of BCSEA-SCBC's real time and costs of participating in Commission proceedings, so the groups strongly favour shorter, more efficient proceedings.

Naturally, the 'devil is in the details,' when it comes to making hearing processes more efficient and more focused. The applicant, the Commission panel, the Commission staff, and the various intervenors may well have conflicting views on what steps are unnecessary and what topics should be the main focus.

At this point, BCSEA-SCBC are not aware of any obvious specific measure that the Commission should take to make its hearing processes more efficient and more focussed. However, as mentioned above, one suggestion would be for the Commission to convene applicants and intervenors to discuss ways to improve efficiency and focus.

d.vi. The role, effectiveness and use of guidelines and policies;

The Commission does use guidelines on a number of topics, such as participant funding, confidential filings, CPCN application requirements, First Nations information filings, and others. These guidelines are generally quite useful.

It could be said that there should be guidelines on additional topics or that the existing guidelines should be made more current. However, creating and updating guidelines takes a considerable

amount of personnel time for the Commission, utilities and intervenors. Notably, the PACA Guidelines do not provide for funding for intervenor participation in the preparation of Commission guidelines. BCSEA-SCBC do participate, nevertheless. If the creation of new guidelines is contemplated, consideration should be given to providing participant funding.

d.vii. Application cycle (turnaround) times and establishing timelines for reviews and decisions;

BCSEA-SCBC do not have concrete data on application turnaround times. It is recognized that utility applicants routinely want and need application decisions sooner rather than later; and that the Commission routinely wants and needs applicants to file applications sooner rather than later.

The Commission does have stated expectations for application filing lead time. And in specific proceedings there is almost always considerable attention paid to the establishment of a regulatory timetable that meets, or attempts to meet, the needs of the various parties.

BCSEA-SCBC would not favour the introduction of one-size-fits-all decision-making time limits for the Commission. However, they are quite willing to discuss turnaround times and timelines in general.

d.viii. Coordinated regulatory processes.

This heading is understood to refer to coordinating the timing of Commission's review of various applications by various utilities so as to avoid bottlenecks and to make the most efficient use of the resources of all parties. The intention is desirable; however BCSEA-SCBC aren't able to give specific suggestions that would go beyond the ad hoc coordination that currently occurs.

3. Structure, resource needs and performance of the BCUC (including but not limited to):

a. Review the use of stakeholder representation models in other jurisdictions and implications on the role of staff;

We await the results of the task force's review of stakeholder representation models in other jurisdictions.

As would be expected, BCSEA-SCBC strongly support a model in which they are able to speak for themselves in presenting their evidence and recommendations to the Commission. They would not support a model in which some government employee is tasked with speaking on behalf of the interests that BCSEA-SCBC represent.

b. Recruitment, retention and compensation of BCUC staff and Commissioners, and staffing levels;

BCSEA-SCBC believe strongly that individuals appointed to be Commissioners should have substantial experience and expertise in energy and energy policy and other topics central to the Commission's mandate. With all due respect, this has not always been the case. In BCSEA-SCBC's view, the most important area in which the government, as distinct from the Commission itself, could improve the effectiveness of the Commission going forward is the selection and appointment of Commissioners.

In that regard, we understand that the remuneration of Commissioners, particularly part-time Commissioners, is barely above a nominal *per diem* and is less than the tariff *per diem* for the least qualified category of consultant in the PACA Guidelines. That must surely be an impediment to attracting and retaining top quality Commissioners. BCSEA-SCBC recommend that the task force propose higher remuneration for Commissioners so as to attract and retain top quality individuals.

c. Organizational structure and BCUC composition, including [subheadings omitted]

As stated above, BCSEA-SCBC believe that Commissioners should have substantial experience and knowledge concerning matters central to the Commission's mandate. In addition to subject matter expertise, the selection of Commissioners should take into account diversity and balance.

d. Efficiency (value for money) and effectiveness of operations and performance, including [subheadings omitted]

BCSEA-SCBC do not have enough background information to address performance measures, operational impediments and opportunities for improvement at this time.

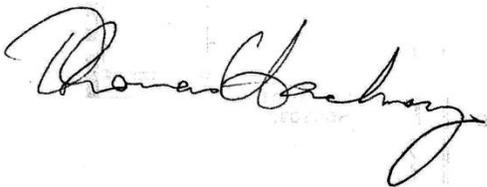
4. In consultation with the Minister of Justice and the Minister Responsible for Core Review, any other matters arising over the course of the review that the Task Force considers significant.

BCSEA-SCBC await notice of any additional matters added to the Task Force's scope of review.

III. Conclusion

Thank you for this opportunity to provide input to the task force.

Yours truly,

A handwritten signature in black ink, appearing to read "Thomas Hackney". The signature is written in a cursive style with a large, looping initial 'T'.

Thomas Hackney, Case Manager