



FOR GENERATIONS

Janet Fraser

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

bchydroregulatorygroup@bchydro.com

Via email: bcucreview@gov.bc.ca

July 14, 2014

Dear Sirs:

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

BC Hydro writes to provide its second written submission to the BCUC independent review task force, in accordance with the revised schedule requesting submissions by July 14, 2014.

For further information, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Janet Fraser". The signature is fluid and cursive.

Janet Fraser

Chief Regulatory Officer

fj/af

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

BC Hydro Submission No. 2

To the Task Force

July 14, 2014

Table of Contents

1	Introduction and Structure	1
2	Matters Outside Scope of Task Force ToR	2
2.1	Treaty 8 Tribal Association (T8TA).....	2
2.2	Gwen Johansson	3
2.3	Association of Major Power Consumers of British Columbia (AMPC).....	3
2.4	Clean Energy Association of British Columbia (CEBC).....	4
2.5	Zellstoff Celgar (Celgar)	4
2.6	Port Alice Gas	5
2.7	Role of BCUC	6
3	Areas of Agreement	10
3.1	Levy Funding Model (ToR, Section 2a).....	10
3.2	Issues List/Scoping (ToR, Section 2b)	11
3.3	Application Cycle Times (ToR, Section 2dvii)	11
3.4	Consumer Advocate (ToR, Section 3a).....	11
3.5	More Full Time Commissioners (ToR, Section 3cii)	12
3.6	Executive Director (ToR, Section 3ci)	12
3.7	BCUC Compensation (ToR, Section 3d).....	12
4	Specific Issues	13
4.1	Jurisdictional Assessment (ToR, Section 1).....	13
4.2	Timeliness, Effectiveness/Efficiency and Cost of Reviews (ToR, Section 2b).....	13
4.3	Intervener Standing and PACA Guidelines (ToR, Section 2c)	17
4.4	Alternative Review Processes (ToR, Section 2dii – 2diii).....	18
4.5	Staffing levels (ToR, Section 3diii)	19

List of Attachments

Attachment 1 BC Hydro Letter to the Task Force re Site C - July 4, 2014

1 Introduction and Structure

BC Hydro is writing to provide its Round 2 submission to the BCUC review task force (**Task Force**) in accordance with the revised time line for submissions. BC Hydro's Round 2 submission consists of addressing certain issues raised by some of the 20 other stakeholders (including the BCUC itself) making Round 1 submissions on June 13, 2014, which were posted on the British Columbia (**B.C.**) Ministry of Energy and Mines and Responsible for Core Review Task Force (**Ministry**) website¹ on June 26, 2014. BC Hydro found the Task Force's June 27, 2014 consultation summary of its introductory meetings held with various stakeholders to be helpful in terms of framing this submission.

BC Hydro welcomes the opportunity to meet with the Task Force a second time in July as provided for in the 'Tentative Draft Time Line for BCUC Review'.² BC Hydro reiterates its desire to review the Task Force consultant's jurisdictional assessment when it is available. BC Hydro understands from the BCUC's Round 1 submission that KPMG has been retained to conduct this work, and notes that BCUC staff appear to be meeting with KPMG (BCUC Round 1 submission, page 2). Public utilities and other stakeholders also have expertise that should be brought to bear on this topic.

The remainder of BC Hydro's Round 2 submission is structured as follows. Section 2 outlines topics raised by various stakeholders that BC Hydro submits are outside the scope of the Task Force's review, which is dictated by the Terms of Reference (**ToR**). Section 3 summarises those areas where there appears to be a fair degree of consensus. Section 4 sets out BC Hydro's comments on various issues raised by stakeholders that are within the ToR but which BC Hydro views as problematic, or which BC Hydro did not raise in its Round 1 submission but which BC Hydro now

¹ http://www.empr.gov.bc.ca/EPD/Electricity/BCUC_Review/Pages/default.aspx.

² <http://www.empr.gov.bc.ca/EEC/Strategy/EEA/Documents/BCUC%20Review%20Timeline%20-%20June%202014.pdf>.

supports after review of the Round 1 submissions. Both sections 3 and 4 are structured to follow the ToR by section.

2 Matters Outside Scope of Task Force ToR

BC Hydro submits that parts of the following stakeholder Round 1 submissions are outside the scope of the ToR.

2.1 Treaty 8 Tribal Association (T8TA)

T8TA is planning to provide the Task Force with a summary review of the Manitoba Public Utilities Board's (**MPUB**) on-going review of Manitoba Hydro's preferred development plan as part of its Round 2 submission. BC Hydro believes T8TA is undertaking this summary review for the purpose of drawing the Task Force into commenting on a potential BCUC review process for Site C Clean Energy Project (**Site C**). BC Hydro submitted a letter to the Task Force on July 4, 2014 addressing this, a copy of which is attached to this submission as Attachment 1. In that letter, BC Hydro reserved its right to reply.

The MPUB review was initiated by Manitoba's Lieutenant Governor in Council³ through an Order in Council and accompanying terms of reference, with the review to be conducted under the authority of section 107 of the Manitoba *Public Utilities Board Act*⁴ (**MPUB Act**). The end result will be a report containing recommendations to the Government of Manitoba. BC Hydro submits that information concerning the MPUB review process for Manitoba Hydro's preferred development plan can only fit within the ToR if it serves as a jurisdictional example (ToR, section 1) of a process somewhat similar to section 5 the *Utilities Commission Act*⁵ (**UCA**), which contains wording similar to section 107 of the *MPUB Act* and is also initiated by terms of reference. BC Hydro will likely provide information on prior use of the *UCA* section 5

³ Order in Council 128/2013.

⁴ C.C.S.M. c.P280.

⁵ R.S.B.C. 1996, c.473.

inquiry power as part of its comments on T8TA's summary review of the MPUB's on-going review of Manitoba Hydro's preferred development plan.

BC Hydro will provide its comments on T8TA's summary review, and its case study of the BCUC's review of BC Hydro's application for a Certificate of Public Convenience and Necessity (**CPCN**) for Dawson Creek/Chetwynd Area Transmission Project, as soon as practicable. At this time, BC Hydro cannot provide the Task Force with a date for BC Hydro's T8TA-related submission given that BC Hydro has not yet seen the T8TA Round 2 submission. BC Hydro will provide the Task Force with a submission date as soon as the T8TA Round 2 submission is either sent directly to BC Hydro or posted on the Ministry's Task Force website.

2.2 Gwen Johansson

Gwen Johansson's Round 1 submission consists of a series of incorrect statements concerning the recent Joint Review Panel's (**JRP**) review of Site C, untested assertions relating to BC Hydro's capital cost estimate for Site C, views on the adequacy of the JRP and other Site C-related environmental assessment streams, and a request that the BCUC review Site C. BC Hydro submits that the ToR do not empower the Task Force to comment on a possible BCUC review process for Site C for the reasons set out in its letter of July 4, 2014.

2.3 Association of Major Power Consumers of British Columbia (AMPC)

AMPC at the end of its Round 1 submission asks the Task Force to revisit "the need and timing for Site C and other generation as part of a comprehensive review of [BC Hydro's Integrated Resource Plan] by a revitalized and independent BCUC". For the reasons set out in its July 4, 2014 letter, BC Hydro submits that the ToR do not empower the Task Force to comment on a possible BCUC review process for Site C.

The remainder of AMPC's Round 1 submission is addressed in sections 3 and 4 below.

2.4 Clean Energy Association of British Columbia (CEBC)

BC Hydro submits that the part of CEBC's Round 1 submission entitled 'The BCUC and BC Hydro' is out of scope because it pertains to the adequacy of BC Hydro's capital plan-related information. BC Hydro submits that the ToR do not empower the Task Force to comment on a particular BC Hydro filing such as a capital plan information-related filing. BC Hydro's capital plan-related information has been the subject of a Negotiated Settlement Process – BC Hydro's F2007/F2008 Revenue Requirement (**RRA**).⁶ The appropriate venue for assessing the sufficiency of BC Hydro's capital plan-related information is BC Hydro's next RRA.

2.5 Zellstoff Celgar (Celgar)

Most of Celgar's Round 1 submission is out of scope, with the exception of recommendations 5, 6 and 7 found at page 6 of its Round 1 submission pertaining to the commissioner appointment process, communications between the BCUC and the Ministry, and the role of experts in BCUC decision-making. The remainder of Celgar's Round 1 submission consists of inviting the Task Force to comment on:

- B.C. Government involvement in the sale of power by industrial self-generators through advancing that somehow 'levelling of the playing field' between BC Hydro and FortisBC Inc. (**Fortis**) is within the ToR. Celgar also makes incorrect assertions that the *Clean Energy Act's*⁷ (**CEA**) section 2 'British Columbia energy objectives' address only BC Hydro. Celgar neglects to reference objectives such as the section 2(k) objective to encourage economic development and the retention and creation of jobs, which is broadly worded

⁶ BCUC Order No. G-143-06, NSP sections 19 to 22.

⁷ S.C. 2010, c.22.

and does not address BC Hydro only. Refer to the ‘Future Industrial Development in BC’ portion of Celgar’s Round 1 submission (pages 1 to 3)

- Rate design matters, through arguments that postage stamp rates should be extended to all of B.C. as opposed to application to BC Hydro’s service area. Celgar’s argument effectively asks for reconsideration of various BCUC decisions,⁸ but in any event is outside the ToR and is best left to BCUC review of electric utility rate design applications. Refer to the ‘Postage Stamp Rates’ portion of Celgar’s Round 1 submission (pages 3 to 4)
- The adequacy of Demand Side Management (**DSM**) program design, through claims about the levels of BC Hydro and Fortis DSM programs, and a request that the Task Force opine on whether DSM program should be delivered by one entity in B.C. Utility deliverance of DSM programs is clearly outside the ToR. Refer to the ‘DSM Program Design’ portion of Celgar’s Round 1 submission.

BC Hydro submits that none of these matters concern the BCUC’s performance or organization, and therefore do not fall within the ToR. Rather, they are policy issues Celgar has also raised in its North American Free Trade Agreement-related complaint.

2.6 Port Alice Gas

Port Alice Gas at page 1 of its Round 1 submission makes several remarks concerning postage stamp rates and cost of service which in BC Hydro’s submission are outside the ToR for the reasons set out above with respect to Celgar’s postage stamp arguments.

⁸ Refer, for example, the BCUC’s decision concerning BC Hydro’s 2007 Rate Design Application – Phase II and III Reasons for Decision, page 33 (discrimination in the rate setting context is a concept that applies intra-utility, not inter-utility); copy available at http://www.bcuc.com/Documents/Proceedings/2007/DOC_17589_12-21_BCH_2007RDA-Decision-Phases_2&3_Final.pdf.

2.7 Role of BCUC

General Comments

Some Round 1 submissions urge the Task Force to comment at a general level on the BCUC's role vis-à-vis the B.C. Government. For example, the Lawson Lundell Round 1 submission at page 2 states: "we believe that the Task Force should clearly identify the institutional role it believes the BCUC should perform". Quail and Worth in part B.1 of their Round 1 submission set out their views on the role of the B.C. Government, BC Hydro and the BCUC. While BC Hydro questions which part of the ToR empower the Task Force to wade into these issues, BC Hydro recognizes that making observations on the respective roles of the BCUC and the B.C. Government could provide context for recommendations the Task Force may make as part of its November 2014 final report to the B.C. Ministers of Justice, and of Energy and Mines/Responsible for Core Review.

BC Hydro addresses two specific submissions on an expanded/changed role for the BCUC in this section.

Quail and Worth: Merging UCA and Environmental Assessment

Quail and Worth submit that the B.C. Government should consider melding the BCUC and the B.C. Environmental Assessment Office (and perhaps other tribunals) to create one tribunal for energy projects and energy sector regulation (page 9). Quail and Worth go on to state that if this idea is pursued, "a process should be established to study the pros and cons, seek buy-in from key players and fashion appropriate institutional reforms". In BC Hydro's view, the idea of housing regulation, including environmental assessment, of the energy industry under one tribunal is more appropriately dealt with in a separate process if the B.C. Government believes the idea has merit. This is a complicated area, and there is a fair amount of historic and jurisdictional experience that could be drawn upon. For example, as the Task

Force may be aware, Part 2 of the 1980 *UCA*⁹ set out a process for the review of major energy projects which included identification of social and environmental impacts and mitigation measures.

CEBC: UCA Public Interest Test

BC Hydro is troubled by CEBC's arguments concerning the public interest test contained in the 'General Concern #1: ratepayers vs. the Public's Interest' and 'BCUC objectives need to be broadened' portion of CEBC's Round 1 submission. It is not clear to BC Hydro whether CEBC's *UCA* public interest test submission is within scope. Nevertheless, due to the significance of the issue CEBC raises, BC Hydro provides a detailed reply.

As a preliminary matter, BC Hydro does not accept CEBC's assertion that it virtually "alone" represents "a point of view focused on" the environment and First Nations (submission, page 5). CEBC is a supplier of BC Hydro's and champions a particular form of electricity deliverance – through independent power producers (**IPPs**). BC Hydro notes Commercial Energy Consumers Association of British Columbia (**CEC**) Round 1 submission at page 2: "CEC is aware of some situations where a *utility's suppliers* and in some cases competitors to the utility service have sought standing before the [BCUC] and in some cases the consequences have been deleterious to customer interests in receiving utility service ..." [emphasis added] (refer also to page 5 of the same submission). In BC Hydro's view, BC Sustainable Energy Association and Sierra Club, B.C. Chapter (**BCSEA**) represent BC Hydro's environmentally minded customers, while First Nations are capable of, and have intervened in, specific BCUC proceedings.

Essentially CEBC asks the Task Force to recommend amendments to the *UCA* to insert a definition of public interest that suits CEBC. BC Hydro is of the view that individual BCUC panels charged with adjudicating applications for CPCNs pursuant

⁹ S.B.C. 1980, c.60.

to section 46 of the *UCA*, expenditure determination requests under section 44.2 of the *UCA*, and filings of electricity purchase agreements (**EPAs**) through section 71 of the *UCA*, etc. should weight the various elements of the public interest. What is in the public interest is a matter of opinion and changes depending on the application.¹⁰ The *UCA* already goes some way to hard-wiring elements of the public interest tests, including requiring the BCUC to consider the interests of persons in B.C. who receive or may receive service from public utilities; and in the case of BC Hydro, to consider and be guided by the sixteen *CEA* section 2 ‘British Columbia’s energy objectives’ (the latter is addressed in more detail below). Further restricting the BCUC’s discretion is not advisable, particularly for the purpose of reducing the ranking of ratepayers’ interests.

CEBC sets up several straw-men in an attempt to support its position concerning public interest tests. However, examination demonstrates that each of CEBC’s arguments is not grounded in recent BCUC experience.

First, CEBC contends that the public interest tests found in the *UCA* need re-writing because somehow the BCUC has not kept up with First Nation and environmental developments:

- As set out in BC Hydro’s Round 1 submission, the BCUC must assess the adequacy of BC Hydro’s consultation with First Nations in the context of its CPCN applications, and expenditure determination request and EPA filings. The BCUC issued guidelines – *2010 First Nations Information Filing Guidelines for Crown Utilities*¹¹ – for this purpose. Commenting on these guidelines would be in scope pursuant to ToR section 2dvi, but CEBC offered no criticism of the guidelines to back up its assertions or specific examples where the BCUC failed

¹⁰ The Supreme Court of Canada emphasized this; refer to *Memorial Gardens v. Colwood Cemetery* [1958] SCR 353 at 357.

¹¹ Available at http://www.bcuc.com/Documents/Guidelines/2010/DOC_25327_G-51-10_2010-First-Nations-Information-Filing-Guidelines.pdf.

to assess the adequacy of BC Hydro's consultation at the BCUC decision-making stage. CEBC's recommendation that a "reconstituted [BCUC] should specifically include ... First Nations considerations" (submission, page 5) is not clear and could lead to a BCUC duty to consult with First Nations, which would undermine the quasi-judicial nature of the BCUC¹²

- CEBC's submission also overlooks the *CEA* section 2 British Columbia's energy objectives which the BCUC must consider and be guided by when ruling on BC Hydro's CPCN (*UCA*, section 46(3.3.(a)), expenditure determination request (*UCA*, section 44.2(5.1)(a)) and EPA filings (*UCA*, section 71(2.1)(a)). A review of the 16 *CEA* section 2 objectives demonstrates that many relate to environmental issues – 2g sets out the B.C. Government's legally binding greenhouse gas (**GHG**) reduction targets; 2(h) and 2(i) also relate to GHGs; see also 2(j) to reduce waste by encouraging the use of waste heat, biogas and biomass, and 2(d) to use and foster the development in B.C. of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources.

Next, CEBC seems to hold out the prospect of the BCUC favouring imported electricity over B.C.-based resources, even though section 6 of *CEA* contains a legally binding self-sufficiency requirement with respect to BC Hydro. BC Hydro cannot plan to rely on external markets to serve its customers. Finally, CEBC maintains that the BCUC focuses on least cost (CEBC states that "[r]atepayers do NOT have the right to cheapest possible electricity at the expense of other important public interests" – submission, page 2). The BCUC has never employed a least cost test, at least with respect to BC Hydro applications – rather, it uses a cost-effectiveness test that in the BCUC's own words includes consideration of

¹² This was a major issue in the 2009 BCUC section 5 Transmission Inquiry; refer to the BCUC's reasons for decision concluding that as a quasi-judicial body the BCUC cannot have a duty to consult with First Nations; http://www.bcuc.com/Documents/Proceedings/2009/DOC_22859_A-21_Duty%20to%20Consult%20FN%20Reasons%20for%20Decision.pdf.

“reliability, dispatchability, timing, and location as well as the cost or price”. In contrast, “least cost includes only cost or price considerations”.¹³

BC Hydro urges the Task Force to either determine that this part of CEBC’s Round 1 submission is out of scope, or in the alternative reject CEBC’s request that the Task Force recommend ill-defined amendments giving environmental and First Nations considerations “equal stature to the usual consideration of ratepayer cost and economic value” on the basis that CEBC has not demonstrated there is a problem in this regard.

The remainder of CEBC’s Round 1 submission is addressed in sections 3 and 4 below.

Conclusion

In BC Hydro’s respectful submission, the Task Force should focus on the current BCUC organization and regulatory review process deficiencies, as opposed to opining on potentially significant regulatory landscape changes. In this regard, BC Hydro agrees with CEC that “[w]hile improvements can be made the underlying structure is sound” (CEC Round 1 submission, page 2).

3 Areas of Agreement

It appears to BC Hydro that there is common ground concerning the following.

3.1 Levy Funding Model (ToR, Section 2a)

No stakeholder opposes, and no stakeholder offered an alternative to, the existing gigajoule utility levy funding model.

¹³ BCUC, *In the Matter of Vancouver Island Energy Corporation: Vancouver Island Generation Project – Application for a Certificate of Public Convenience and Necessity*, Decision, September 8, 2003, page 77.

3.2 Issues List/Scoping (ToR, Section 2b)

BC Hydro, FortisBC, AMPC, Lawson Lundell, Quail and Worth, BCSEA and Nelson Hydro support hearing process improvements leading to more focused proceedings. Generally speaking, there appears to be agreement that hearings can tend to lose focus through the Information Request (IR) process, and that development of either an issues list or some form of BCUC panel scoping limiting the subject matters under review would lead to more effective and efficient BCUC review processes.

3.3 Application Cycle Times (ToR, Section 2dvii)

Most submissions commenting on this issue favoured guidelines setting out cycle times for the review of applications such that (to borrow Canadian Association of Petroleum Producers' words "timelines and processes are predictable" (submission, page 2 of 3)). No stakeholders favoured legislated timelines. All stakeholders making submissions on this issue agreed BCUC panels should have some flexibility in the case of complex applications or hearing issues. BCSEA raised concern about the establishment of 'one-size-fits-all timeline' for BCUC review of applications.

BC Hydro, at page 13 of its Round 1 submission, highlighted that the Alberta Utilities Commission (AUC) sets out different cycle times for the review of different types of applications; FortisBC also picked up on this line of thinking at page 8 of its Round 1 submission. BC Hydro submits that some level of cycle time differentiation based on the type of application should be explored by the Task Force.

3.4 Consumer Advocate (ToR, Section 3a)

While many submissions did not comment on the consumer advocate model, those that did raised significant concerns centred on independence, costs and relationship with existing interveners (AMPC, BC Public Interest Advocacy Centre (BCPIAC), FortisBC). Other than Canadian Direct Insurance (submission, pages 2 to 3) and possibly Nelson Hydro (submission, page 2 – 'regulatory advisor' concept), no stakeholder appears to support the creation of an independent Consumer Advocate

to represent residential and possibly commercial customers. Quail and Worth make the suggestion that BCPIAC could be contracted to act as a residential customer representative.

3.5 More Full Time Commissioners (ToR, Section 3cii)

BC Hydro, FortisBC, AMPC, Lawson Lundell, Quail and Worth and CEC agree that more full time commissioners are required at the BCUC. While there is variation on the appropriate number of full-time commissioners, all were of the view that having more than one-full time commissioner would be beneficial due to among other things increased retention of regulatory knowledge by commissioners, and greater familiarity with regulatory issues and policy. BCSEA makes the related comment that commissioners should have “substantial experience and expertise in energy and energy policy and other topics central to the [BCUC]’s mandate” (page 6 of 7). BC Hydro agrees with this comment, and submits that appointing more full time commissioners is one means of addressing this.

3.6 Executive Director (ToR, Section 3ci)

BC Hydro, FortisBC, Lawson Lundell, and Quail and Worth are in favour of reinstating an Executive Director of Staff position at the BCUC. The main theme of the comments is that the Executive Director would focus BCUC staff on the germane issues in applications and free up the Chair from administrative duties.

3.7 BCUC Compensation (ToR, Section 3d)

BC Hydro, FortisBC, Lawson Lundell, Quail and Worth, AMPC, CEBC, BCPIAC and BCSEA support the review of commissioner and BCUC staff compensation. Most stakeholders comment that the BCUC needs to be able to pay a salary competitive with the regulatory marketplace, as individuals with regulatory knowledge are in high demand by industry.

4 Specific Issues

4.1 Jurisdictional Assessment (ToR, Section 1)

AMPC believes “the best working models of regulatory regimes are found in jurisdictions where the most significant utilities are investor owned such as Alberta, California and Arizona” (submission, page 3). BC Hydro agrees that these jurisdictions are relevant – BC Hydro references the AUC and the California Public Utilities Commission as examples of jurisdictions that implement timelines for application reviews (BC Hydro Round 1 submission, page 13). However, BC Hydro questions whether the cited jurisdictions offer the best working models across the board. This is an example of why BC Hydro believes it is so important for the Task Force to share KMPG’s jurisdictional assessment for comment.

4.2 Timeliness, Effectiveness/Efficiency and Cost of Reviews (ToR, Section 2b)

Introductory Remarks – CEC’s Value of Regulation, the BCUC’s Round 1 Submission and CEBC’s Ranking of Effectiveness

CEC defends (and quantifies) the value of regulation as part of urging stakeholders to not focus too much on details such as the IR process (submission, pages 3 to 4). BC Hydro does not question the value of regulation, which flows from the regulatory compact – a public utility is recognized as a natural monopoly and in return is obligated to provide service to all customers in its service area as overseen by a utility commission. In BC Hydro’s view, the value of regulation and making the BCUC’s review processes more efficient are not mutually exclusive.

The BCUC’s Round 1 submission references a series of external factors as the basis, or partial basis, for an acknowledged lengthening of its review processes since the B.C. Government introduced its first Energy Plan on November 25, 2002. BC Hydro noted two of these external factors in its Round 1 submissions – court decisions requiring the BCUC to assess the adequacy of First Nation consultation in

the context of BC Hydro's CPCN applications and EPA filings, and the introduction in 2010 of CEA's 16 British Columbia energy objectives. However, in BC Hydro's view external factors do not fully explain why the BCUC's review processes for BC Hydro's applications have generally become less efficient. BC Hydro relies on its Round 1 submission in this regard, and notes FortisBC's Round 1 submission and the cited examples of the loss of efficiency in recent years (submission, pages 4 to 6).

CEBC advances that "effectiveness must be the primary objective" (submission, page 3). BC Hydro does not agree that effectiveness, particularly as described by CEBC to include the fuzzy concept of 'social license', should trump efficiency in every case. At a high level, a BCUC review process is not likely to be viewed as effective if it is not efficient. BC Hydro's view is more aligned with BCPIAC's observation that there can be trade-offs between these two objectives depending on the significance of the BCUC decision or the degree of controversy (which likely means a higher risk of appeals) (BCPIAC Round 1 submission, page 2), as opposed to a rigid ranking of one objective over the other.

BC Hydro agrees with CEBC that transparency and openness are important BCUC review process considerations. However, openness can be, and in BC Hydro's experience has been, periodically abused where particular interests seek to use the BCUC's review processes for commercial ends. Several stakeholders believe that efficiency gains can be made without reducing effectiveness (refer to section 3 above).

Quail and Worth: Discovery process

Quail and Worth propose a discovery process to reduce the number of pre-hearing IRs as a way to make BCUC review processes more efficient. A discovery process is envisioned as replacing at least one round of IRs from BCUC staff; instead, BCUC staff would direct oral questions to public utility witnesses, with the exchange being

transcribed. The public utility would be free to provide answers at a later date where not possible at the real-time exchange.

Quail and Worth are to be commended for putting forward ideas to make current BCUC review processes more efficient. However, it is not clear to BC Hydro that the benefits advanced by Quail and Worth would outweigh the burden and possible expense of the proposed discovery process, taking into account the needs of the BCUC panel, the amount of controversy, the parties' resources (BCUC resources could be overloaded if a new discovery rule-like process were to be introduced, likely giving rise to the need for more procedural conferences or motions) and the importance of the issues.

In BC Hydro's view, the vast majority of applications do not proceed to oral hearing and would therefore not likely be candidates for discovery because among other things the Streamlined Review Process (**SRP**) alternative exists. In addition, it is likely that many questions would need to be responded to in writing, which would reduce the usefulness of discovery as compared to the IR process. For complex applications, BC Hydro believes that the central issue is how to limit unnecessary or prolonged BCUC staff use of discovery without compromising the ability of the particular BCUC panel and interveners from obtaining truly relevant information. In the court context the threat of costs can impose discipline on the abuse of discovery. However, this constraint would not exist as BCUC staff would be conducting the discovery. Some form of time limit and relevancy test would be required. The scope of discovery processes could be vast – even the implementation of a 'semblance of relevance' test such as that used in court trial discoveries could lead to what is in effect a full-blown oral hearing.

BCPIAC: Limits on IRs and/or Public Utility Spend on Applications

BCPIAC suggests the Task Force consider recommending that the BCUC impose a limit on the number of IRs in a given proceeding, and that it may also be appropriate

to restrict the amount of money public utilities are able to spend on regulatory proceedings, “both to avoid waste of ratepayer money and to help even the playing field between the utilities and the interveners”. BC Hydro strongly disagrees with the ‘utility cap proposal’ given that BC Hydro has a service obligation under section 39 of the *UCA* (and approved BC Hydro tariffs) and bears the evidentiary onus of demonstrating its case. It is the responsibility of the regulated utility to develop its evidence to support the application at hand. Constraining utilities by a funding cap will almost certainly lead to applications that are light on required evidence, resulting in a longer evidentiary phase and possibly less well-reasoned BCUC decisions. In addition, a utility cannot entirely control the cost of a proceeding, as the number of interveners and issues that may unexpectedly arise during a proceeding are not in the utilities control and can add extra cost. BC Hydro also notes that the costs of a particular hearing are ultimately reviewed by the BCUC and approved for recovery in rates. Costs that the BCUC considers to be prudently incurred should be recoverable. BCPIAC offers a more promising avenue, which is to revisit the BCUC’s *Participant Assistance/Cost Award Guidelines*¹⁴ (**PACA Guidelines**) and ensure that proper funding is available (refer to BC Hydro’s submission in section 4.3 below).

BCPIAC appears to tie a proposed IR cap to the idea that the BCUC develop guidelines identifying the type of evidence required for types of applications. BC Hydro agrees that application information guidelines are useful, and notes that such a guideline already exists for CPCN applications (*2010 Certificate of Public Convenience and Necessity Application Guidelines*).¹⁵ In BC Hydro’s experience the CPCN Guidelines have been helpful in confining attempts to turn two of BC Hydro CPCN applications into full blown capital plan, water use plan and climate action plan reviews (refer to BC Hydro’s Round 1 submission, page 12). However, it has

¹⁴ Available at http://www.b cuc.com/Documents/Guidelines/2011/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf.

¹⁵ Available at http://www.b cuc.com/Documents/Guidelines/2010/DOC_25326_G-50-10_2010-CPCN-Application-Guidelines.pdf.

not been BC Hydro's experience that applications filed in accordance with BCUC application information guidelines result in a reduction in IRs. Issues can arise during the course of a proceeding, or develop into more complex issues than originally considered, and as a result may require much more analysis and enquiry than originally anticipated. As BCPIAC points out, a thorough review and thoughtful decisions are required when hundreds of millions of ratepayer dollars are at stake. In BC Hydro's submission, issues lists and/or BCUC panel scoping early in the BCUC review process, and re-instituting an Executive Director of staff position, are more promising avenues to control BCUC staff IRs rather than a (potentially arbitrary) limit on the number of IRs.

4.3 Intervener Standing and PACA Guidelines (ToR, Section 2c)

FortisBC, CEBC, BCPIAC, Lawson Lundell, AMPC and CEBC raise the issue of intervener standing in BCUC proceedings. Some of these submissions advocate for a more clear determination of standing up front based on direct interest in the proceeding. Lawson Lundell offers that intervener standing and funding should be tied more directly to BCUC determination of the scope of the particular hearing. AMPC similarly states that a "key to managing hearing costs is to consistently limit the scope of intervention to a well-defined purpose and to prevent duplication by multiple intervenor groups repeating positions" (submission, page 5). While BC Hydro indicated in its Round 1 submission that it had not directly experienced problems with intervener standing, it is supportive of BCUC panels scoping hearings early in the process and notes this could have a beneficial impact on the issue of intervener standing.

Quail and Worth, CEC, CEBC, BCPIAC and BCSEA favour review of the PACA Guideline funding levels. BC Hydro supports such a review. CEC's and BCPIAC's understanding is that the PACA Guideline daily rates have not increased for over a decade (CEC Round 1 submission, page 6; BCPIAC Round 1 submission, page 3). As noted by BCSEA, funding levels should at least be updated to account for

inflation (BSCEA Round 1 submission, page 4 of 7). Other issues include BCPIAC's reference to the low number (two) of preparation days per proceeding day for oral or complicated written hearings (submission, page 3). BC Hydro is sympathetic to BCPIAC's suggestion that advance cost awards be allowed to better enable interveners to retain experts; interim approval for funding to retain experts should not be the exception to the rule (BCPIAC submission, page 4). BC Hydro expects that advance cost awards would be eligible to be clawed back or reduced if after the proceeding was over, a particular BCUC panel questions that the value of the intervention.

4.4 Alternative Review Processes (ToR, Section 2dii – 2diii)

CEBC states that it favours oral hearings over written negotiated settlement processes (**NSPs**). CEBC ranks oral hearings first, "with other formats falling considerably behind" (written hearings and lastly, NSPs – submission, page 5). CEBC's recommendation in this regard, set out at page 6 of its submission, is unclear – "[e]stablish parameters and guidelines for each of the process options". These guidelines already exist for SRPs and NSPs (refer to BC Hydro's Round 1 submission, section 4.4). In any event, BC Hydro submits that the choice of review process is best left to individual BCUC panel discretion, and that there should not be any ranking of review process preference in the abstract. Like BCSEA, BC Hydro has found that BCUC panels "choose to utilize ... alternatives to conventional hearing processes based on appropriate criteria and input from parties" (BCSEA Round1 submission, page 4 of 7).

AMPC questions SRPs because in its view, a well-run hearing obviates the need for expedited review processes (submission, page 6). While BC Hydro agrees that SRPs are not suitable as the only BCUC review process for complex applications, BC Hydro believes that SRPs offer a good balance between effectiveness and efficiency for simpler applications. BC Hydro's experience with the SRP for its 2013 Residential Inclining Block re-pricing application was positive (BC Hydro

Round 1 submission, page 9). BC Hydro submits that sections III and IV of the BCUC's 2012 SRP Guidelines¹⁶ provide appropriate safeguards, including most importantly individual BCUC panel discretion, as when a SRP should be used.

4.5 Staffing levels (ToR, Section 3diii)

As set out above in section 3, BC Hydro agrees that BCUC staff compensation levels should be reviewed. However, BC Hydro cautions against the Task Force recommending a certain level of BCUC staffing, such as AMPC's opinion that "it is hard to envision the work of the BCUC being accomplished with less than ... 50 full time professionals" (submission, page 8).

All of which is respectfully submitted.

¹⁶ Copy available at http://www.bcuc.com/Documents/Guidelines/2012/DOC_30215_03-12-Streamlined%20Review%20Process%20Guidelines.pdf.

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

**BC Hydro Submission No. 2
To the Task Force
July 14, 2014**

Attachment 1

**BC Hydro Letter to the Task Force regarding Site C
July 4, 2014**



Craig Godsoe
Sr. Solicitor & Counsel
Phone: (604) 623-4403
Fax: (604) 623-3606
Email: craig.godsoe@bchydro.com

Via email: bcucreview@gov.bc.ca

4 July 2014

Dear Sirs:

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

We write with respect to Treaty 8 Tribal Association's (T8TA) 13 June 2014 submission to the Task Force. T8TA proposes "three forms of intervention in this proceeding", two of which BC Hydro submits do not accord with the engagement process the Task Force has set out:

- A "case study of the recent experience" of West Moberly First Nations in the BCUC review of BC Hydro's Dawson Creek/Chetwynd Area Transmission Project (DCAT) (submission, page 3). BC Hydro does not object to the DCAT case study at this time, provided BC Hydro is afforded a right to comment on the case study when it is produced on either 7 or 14 July 2014. Refer to Part 1 below; and
- A "summary review" of the Manitoba Public Utilities Board's (MPUB) on-going review of Manitoba Hydro's preferred development plan (capital plan), which includes assessing the need for and alternatives to two proposed Manitoba Hydro hydroelectric generating facilities (Keeyask and Conawapa), for the express purpose of prompting the Task Force to weigh in on the Joint Review Panel's (JRP) report Recommendations #46-#49 concerning BC Hydro's proposed Site C Clean Energy Project (Site C) and a possible future BCUC review process for Site C (submission, pages 3-5). BC Hydro strongly objects to T8TA's proposed summary review on the basis that no reasonable reading of the Task Force's Terms of Reference (ToR) empower the Task Force to inject itself into the on-going harmonized environmental assessment of Site C, and therefore the summary review cannot assist the Task Force in providing its report and recommendations to the British Columbia (B.C.) Minister of Justice and the B.C. Minister Responsible for Core Review. Refer to Part 2 of this letter.

T8TA asks for Task Force and participant comments on these two proposals by 20 June 2014 (submission, page 5). While T8TA's submission is dated 13 June 2014, BC Hydro was only made aware of the submission when it was publicly posted on the Task Force website on 26 June 2014. BC Hydro is not aware of any Task Force comment on the two T8TA proposals.

British Columbia Hydro and Power Authority
16th Floor, 333 Dunsmuir Street, Vancouver, BC, V6B 5R3
www.bchydro.com

Part 1 – T8TA’s Proposed DCAT Case Study

At first blush, T8TA’s proposed DCAT case study, described at a high level at page 3 of the T8TA submission, could fit within the Task Force ToR. A possible exception is bullet 1 (“to evaluate the direction and guidance given to applicants respecting Aboriginal consultation in advance of and in preparation for application to” the BCUC), although this bullet may fit within the ToR if T8TA proposes to comment on the BCUC’s 2010 *First Nations Information Filing Guidelines for Crown Utilities*¹ given that TOR section 2(d)(vi) provides that the Task Force is to comment on the “role, effectiveness and use of [BCUC] guidelines and policies”. Similarly, evaluating BCUC procedures for determining the sufficiency of First Nation consultation-related application information (bullet 2), the efficiency and effectiveness of the BCUC’s review of such information (bullet 3) and intervenor funding (bullet 4) likely fall within ToR sections 2(b), 2(c) and possible other ToR sections.

However, BC Hydro reserves a right to comment on the T8TA DCAT case study once it is submitted to the Task Force. In BC Hydro’s view, the DCAT case study should have been included as part of T8TAs’ round 1 submission on 13 June, which would have permitted BC Hydro to comment as part of BC Hydro’s round 2 submission on 14 July 2014.

Part 2 – T8TA’s Proposed Summary Review of MPUB’s Manitoba Hydro Capital Plan

T8TA transparently makes its real purpose clear for undertaking a summary review of MPUB’s on-going review of Manitoba Hydro’s capital plan at page 5 of its submission where it states that in light of the JRP’s Recommendations #46-#48 concerning Site C, the Task Force should comment on possible BCUC review process for Site C (T8TA refers to other BC Hydro large-scale hydroelectric facilities, of which there are none given the *Clean Energy Act*²’s sections 10 and 11 prohibitions, and accordingly the only possible large-scale hydroelectric project that can be commented on is Site C).

No reasonable reading of the ToR empower the Task Force to comment in any way on a possible future BCUC review process for Site C, and/or JRP Recommendations #46 -#49. These JRP recommendations are made to the B.C. Government as to whether the following Site C-related matters should be sent to the BCUC for review and comment: the Site C capital cost and unit energy cost estimates (JRP Recommendation #46); BC Hydro’s annual electric load forecast (JRP Recommendations #47 and #49); BC Hydro’s Demand Side Management plans (Recommendations #49); and the adequacy of B.C. Government and/or BC Hydro funding for geothermal resource potential investigations (Recommendations #48).

The Federal Minister of Environment and B.C. Minister of Environment entered into an agreement to conduct a co-operative environmental assessment for Site C in February 2012. That agreement makes it clear that it is the JRP that is the body empowered to provide recommendations to the Federal and B.C. Governments concerning Site C. The Task Force has not been empowered by the ToR to comment on possible BCUC review processes for individual BC Hydro projects, particularly projects such as Site C that are in a review process at this time. Task Force commentary on a possible BCUC review process for Site C raises serious fairness issues. The Task Force has not reviewed the volumes of evidence submitted by BC Hydro and T8TA among others which may relate to JRP Recommendations #46-#49. Permitting T8TA to draw the Task Force into commentary on JRP Recommendations #46-#49 and a possible Site C BCUC review process guarantees a response from BC Hydro, and will pull the Task Force away from the task at hand, which is to

¹ 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.

² S.C. 2010, c.22.

review the BCUC's organization and current review processes at a generic level (e.g., use of Negotiated Settlement Processes (NSPs), oral hearings, written hearings).

BC Hydro requests that the Task Force provide direction to T8TA that its proposed summary review of MPUB's on-going review of Manitoba Hydro's capital plan can not in any way be tied to commentary on Site C for the reasons set out above.

The questions remains whether shorn from its connection to Site C, T8TA's proposed summary review of MPUB's on-going review of Manitoba Hydro's capital plan can in any way fit into the Task Force ToR. In BC Hydro's submission the summary review cannot fit into the Task Force ToR because there are only two other possible uses of such a summary review:

- Comparison of BC Hydro's capital plan-related information to that of the MPUB's on-going review of Manitoba Hydro's capital plan. BC Hydro submits that the ToR do not empower the Task Force to comment on a particular BC Hydro filing such as a capital plan information-related filing. BC Hydro's capital plan-related information has been the subject of a NSP – BC Hydro's F2007/F2008 Revenue Requirement (RRA).³ The appropriate venue for assessing the sufficiency of BC Hydro's capital plan-related information is BC Hydro's next RRA;
- Task Force investigation of a BCUC review process at a generic level such as use of a section 5 *Utilities Commission Act*⁴ (UCA) inquiry, which in BC Hydro's view is not assisted by a summary of a one-off MPUB review of Manitoba Hydro's capital plan. BC Hydro submits that it is more instructive to review the instances in which the section 5 UCA referral power has been used, such as the 2003 Heritage Contract Inquiry (generally viewed as successful) and the 2008/2009 Transmission Inquiry (generally viewed as not successful). The difference was largely the result of the former having a relatively narrow focus, with a discrete set of questions the BCUC was to address. BC Hydro (and other participants) can provide information on the past use of section 5 inquiries if this would assist the Task Force.

If the Task Force permits T8TA to submit its proposed summary, BC Hydro reserves a right to comment.

All of which is respectfully submitted,



Craig Godsoe
Sr. Solicitor & Counsel

³ BCUC Order G-143-06, NSP sections 19-22.

⁴ R.S.B.C. 1996, c.473.