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VIA ELECTRONIC MAIL

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**Attention: Mr. Peter Ostergaard, Chair,
Mr. Michael Costello and Mr. Brian Wallace**

Dear Sirs:

Re: Review of the British Columbia Utilities Commission (BCUC) – Terms of Reference

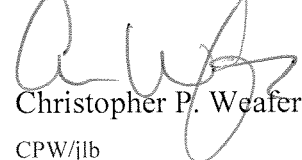
We are counsel to the Commercial Energy Consumers Association of British Columbia (CEC). As requested in your letter of May 12, 2014 to Mr. David Craig, Executive Director of the CEC, attached please find the CEC's submissions with respect to the Review Terms of Reference with respect to the above-noted matter.

Our client appreciates the opportunity to make submissions to the Independent Review Panel.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION


Christopher P. Weafer

CPW/jlb
Encl.

COMMERCIAL ENERGY CONSUMERS (CEC) ASSOCIATION OF BC
INITIAL INPUT TO THE
INDEPENDENT REVIEW OF THE BRITISH COLUMBIA UTILITIES COMMISSION

Background

The British Columbia Utilities Commission (BCUC) is an independent regulatory agency of the Provincial Government that operates under and administers the *Utilities Commission Act* (1980). Its primary responsibility is the regulation of British Columbia's natural gas and electricity utilities. It also regulates intra-provincial pipelines, many district heating systems and universal compulsory automobile insurance. The BCUC approves projects and costs, and sets rates, while ensuring utilities provide safe and reliable service. As a quasi-judicial tribunal, the BCUC makes decisions based on evidence, and abides by standards of procedural fairness. BCUC proceedings include expert testimony, cross-examination of evidence, and final arguments.

Like other utility regulators, the BCUC's mandate under the *Utilities Commission Act* is to ensure that ratepayers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates, and that shareholders of those utilities are afforded a reasonable opportunity to earn a fair return on their invested capital.

During the recent Industrial Electricity Policy Review (IEPR), customer groups and utilities frequently raised concerns about the BCUC. As a result, the IEPR Task Force recommended an independent review of the BCUC to evaluate resource needs, review processes, and performance. Government is initiating a review of the BCUC, through the Core Review process, with the goal of increasing the BCUC's effectiveness and efficiency.

The CEC has represented commercial class of customers including in BC Hydro and FortisBC Energy Inc. proceedings before the BCUC for the past 12 years. The CEC was formed to ensure that the commercial customer class had representation before the BCUC as at the time only residential and industrial class customers participated in BCUC processes.

The Task Force asked the CEC for written comment based on the interview the Task Force held with the CEC representatives. The following provides the CEC's written comments which track the topics identified in the Terms of Reference of the Task Force.

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

The Commercial Energy Consumers Association of British Columbia (CEC) has not done a review of comparable utility regulators and models in other jurisdictions. The CEC believes that the existing model in British Columbia is suitable to the jurisdiction. In fact in regulatory proceedings the utilities have indicated that British Columbia has a unique jurisdiction and the circumstances in other jurisdictions are not comparable. The CEC agrees and as a result the CEC believes that the regulatory processes and practices of the

BCUC are generally consistent with the legislation and the environment that utilities and customers operate in. While improvements can be made the underlying structure is sound. The CEC has not seen any evidence that the Consumer Advocate model utilized in Alberta, for example, would add any significant value to the regulatory process.

2. BCUC processes:

a) Existing levy funding model and possible alternatives;

The CEC is not aware of an alternative to the existing funding model which sees rate payers in effect pay for the BCUC through levies applied to the regulated utilities. Ultimately the levies go into the utilities' revenue requirements and the rate payers pay the cost. The CEC submits that the existing model is appropriate and an alternative model of taxpayers support would not be acceptable to the government given the increasing demands on taxpayers to support key governmental activities such as education and health care. The CEC is not aware of a model which would see the utility shareholder at risk for the levy funding model and expects that should not be acceptable to the utilities. The benefits of regulation flow through to the utility customers. As such the costs should be borne by the utility customers. This is particularly true because the utility regulation in BC has been capable of delivering positive net benefits for customers and rate payers.

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

The CEC is not aware of significant issues with respect to timeliness, efficiency and cost of reviews, however is aware of complaints from utilities. The CEC is aware of and has shared some concerns with regard to particular decisions of the Commission, when those decisions have strayed from basic utility rate making principles such as setting rates based on the costs of providing service. The CEC's experience is that the length of time for review is often associated with the quality of the application filed by the utilities. High quality, complete applications require less detailed information request processes and provide a record for interveners and the Commissions to assess whether the approval of the application is in the public interest. Utilities sometimes have deficient applications and can provide inadequate responses to information requests. This can extend the regulatory time period for processing applications.

The CEC is aware of some situations where the utility's suppliers and in some cases competitors to the utility service have sought standing before the Utility Commission and in some cases the consequences have been deleterious to customer interests in receiving utility service priced at the cost of service. The CEC has found the results to be less cost-effective for customers.

In terms of the effectiveness and efficiency of review, it is critical that applications receive thorough assessment as ultimately ratepayers pay the costs of the utilities operations. The existing effectiveness and efficiency has to be measured against

the impact of poor decision making, or monopolistic behavior not subject to review. While the CEC understands the potential frustration of utilities with respect to the existence of the regulatory process, nonetheless it is the best alternative to the absence of competition in the market place for monopoly electric and gas utilities operating in British Columbia.

The CEC recommends that the Task Force develop a full and proper understanding of the importance of effectiveness, which has more of a cost/benefit evaluation concept related to it. One of the essential concepts in regulatory review is cost-effectiveness which is a multi-dimensional cost benefit assessment balance taking into account all aspects of the public interest. The efficiency concept tends toward an outputs delivered for inputs concept and can gravitate toward measureable activity, in the regulatory business counting of applications, information requests and process days is often pursued with calculations of averages and potentially average costs. In fact the most ardent utility critique has been of the number of information requests utilities now have to handle in any given regulatory process. It is true that the number and quality of information requests have respectively increased and in some cases decreased over time and the Commission has placed some emphasis on these sorts of measures. The CEC recommends that the Task Force not get trapped into this ineffective approach to understanding the public interest measures of the BCUC regulatory context in BC.

The CEC recommends evaluation of effectiveness, cost-effectiveness and cost benefit of the regulatory process particularly using a comprehensive public interest scope. The CEC recommends the following categories for evaluation based on these principles:

- (A) Protection of Customer/Ratepayer Interests
- (B) Protection of Fair Returns and Recovery of Costs & Capital for the Utility
- (C) Enabling Implementation Details for Government Policy Directions
- (D) Reconsideration of Public Interest Decisions
- (E) Protection of Government from Political Controversy
- (F) Availability of Knowledgeable Advice & Critique for the Utility
- (G) Availability of Knowledgeable Advice & Critique for Government

As can be seen from the above the scope for this evaluation encompasses the whole legislative/regulatory context within which all the key stakeholders for the Task Force and its considerations are engaged.

The CEC has made a preliminary calculation of the cost-effectiveness of the Commission, which shows an impressively high value realized and an even higher potential value which could have been realized.

EVALUATION** OF THE COST-EFFECTIVENESS OF THE BC UTILITY COMMISSION	
CATEGORY	2014 Present Value Benefit Estimates (\$ in billions)
Protect Customer/Ratepayer Interests	\$ 9.6
Protect Utility Shareholder Interests	NE*
Enable Implementation of Government Utility Policy	\$20.9
Reconsideration of Public Interest Decisions	\$ 2.5
Protect Government from Controversy Politics	NE*
Advice and Critique for Utilities	\$.01
Advice and Critique for Government	\$12.2
TOTAL	\$45.2

*NE not evaluated at this time

** This is a preliminary evaluation but is indicative of the magnitude of the value

The CEC evaluation of the Commission’s cost effectiveness has considered both value added opportunities captured, those that could have been captured but were not and those that are yet available to capture. The benefits are not yet at this time allocated based on the level of contribution to the outcome of related parties. Approximately 40 regulatory process items have been evaluated. This is a limited subset of what could be a comprehensive evaluation. Two of the categories have not been explicitly quantified; the protection of utility shareholder interests because they have not really been compromised and the protection of the government from political controversy because this is a soft more subjective issue.

The cost-effectiveness of the Commission’s role since inception has been and or could have been overwhelmingly positive relative to the costs of the processes.

The CEC finds that the most important source for cost-effectiveness value is in the relationship between Government and the Commission. The CEC believes that this key structural aspect of the Commission’s role could be improved and made much more cost-effective.

The primary issue is frequently related to the fact that government develops policy and direction within a political context and or a constrained context in terms of having key information for informing decisions tested in a deliberative review context. Periodically when government then wants to control outcomes it has removed a number of key decisions from the regulatory review context. Many of

the high value cost-effectiveness contributions have come from or could have come from the input of deliberative review of information, which could have informed key decisions which would capture the benefits available from important opportunities.

The most important and critical issue for the BCUC Review Task Force to concentrate on is structural reform of the relationship between the utilities, the Commission and Government when it comes to issues important to government and all stakeholders. Reform in this area is likely worth billions of dollars in the future and can be shown to be demonstrably valuable in the billions of dollar in the past.

The cost-efficiency issues with respect to the Commission's regulatory processes, while important, pale in comparison to the cost-effectiveness benefits. The costs of the regulatory process enable the capturing of the related cost-effectiveness benefits. The cost-efficiency review of the BCUC Task Force should not be allowed to overwhelm the cost-effectiveness purposes, achievements and potential of the Commission and its regulatory role.

a) Standing/funding for interveners;

The CEC submits that its experience has been that the Commission has been effective in managing the participation by interveners in the regulatory process on the issue of eligibility and standing. Staff and the Commission have encouraged consolidation of common interests and as a result in British Columbia there are now four generally identified customer interveners that have represented the various interests; industrial, residential, commercial, and environmental representatives.

The CEC is aware of standing being provided to some suppliers to the utilities and some competitors seeking to gain an advantage against the utility cost of service model. The CEC is not fully conversant with whether or not these interventions have been funded. Generally, however, the CEC expects that the intervener process and funding should be intended to enable customer groups to maintain vigilance over the "regulatory compact" as practiced in particular regulatory decisions. The CEC does not believe it is fully appropriate for supplier and competitor interests to be pursued on a customer funded basis before the regulator. It is the customers who pay for the regulatory funding through their rates and it is their interests that should be protected in the "regulatory compact" versus those of the utility shareholder.

There have been rare occasions where interveners have received standing and have caused proceedings to be particularly time consuming and costly. This can be a result of the public interest airing of contentious topics for which there are often important benefits. Generally the Commission disciplines this situation by reducing cost awards to interveners who do not make a valuable contribution as per the Participant Funding Guidelines. An example would be in the Fortis BC

Advance Metering Initiative proceeding wherein one party and the counsel to one party received significantly reduced funding due to findings of reduced contribution to the process and excessive filing of evidence, which was not accepted by the Commission. This is unlikely to occur on a regular basis given the cost exposure of participants.

The CEC notes that the funding for interveners has not been reviewed or increased in approximately ten years and this poses a strain on participation. Intervenors also face significant lag in payment which can impact retention of consultants and qualified experts.

As noted in the meeting with the Panel Review in utility regulation there is a tragedy of the commons in that for most customer groups and specifically commercial customers the cost of energy is not in and of itself significant enough to justify a single company funding participation in regulatory process. Also for many commercial customers their internal procedures flow through costs to end customers who do not own the property or metered service. One issue for society is that the commercial sector is over charged in rates, relative to the applicable cost of service, for both its gas utility and electric utilities service. This consequence has resulted in unfair rates for the commercial sector to the detriment of business, public institutions such as hospitals and schools and the residential rental industry in British Columbia. The net result, for BC Hydro electricity, has had the commercial sector subsidizing residential customers by paying in excess of their cost of service by approximately 124% for small business, 118% for medium business and 107% for large business compared to residential customers paying less than their cost of service at only 90% of cost.

b) Review processes:

i) Conventional oral and written public hearings;

The CEC supports the need for oral and written hearing process as a means to ensure openness and transparency as well as access to management of the utilities to ensure that the public interest is being served by the monopoly utilities in British Columbia in accordance with the positions of the *Utilities Commissions Act*. This traditional model of regulation and oral hearing has served the public interest well in British Columbia. Particularly, the intensive nature of this form of regulation has enabled the Commission and intervenors to delve into and understand the background behind customer rate application proposals and other applications from the utilities such that significant flaws have been identified and correction has been enabled.

The BC Hydro LTAP hearings and the FortisBC PBR hearings are both examples of regulatory processes that enabled the Commission and intervenors to gain profoundly better understanding of issues through the

deliberative process, which then has created the potential for substantive cost-effectiveness from the regulatory process.

- ii) Alternative review processes, including expedited hearing processes and negotiated settlement processes;

The CEC is encouraging of alternative review processes as identified in Commission guidelines and has participated actively in these processes. The relationship between the interveners and the utilities has been positive in these processes and in most cases the parties have been satisfied with the results. A key requirement of these processes is ensuring that there is a competent, experienced, respected and knowledgeable mediator/facilitator who can drive the parties to converge toward a settlement.

- iii) Involvement of the BCUC in alternative regulatory processes;

As noted above, competent, respected participation in the alternative regulatory processes by representatives of the BCUC, be it senior staff or Commissioners, is encouraged by the CEC. The Commission staff has tried a number of approaches over the years to its participation in the alternative regulatory processes. These have varied from active lead participation to resource for the facilitator and the parties to ensure sound evidence based rationale for developing a convergent position for the parties. The CEC favours active participation of the Commission staff and the role of resource to the parties working with a facilitator leading the process.

- iv) Generic proceedings on specific issues that apply to more than one utility;

The CEC has participated in generic proceedings with mixed results. The efficiency of policy proceedings on generic issues is mixed. The resources of utilities lined up on one side of the table against interveners who may or may not have common interests and objectives can result in an unbalanced playing field in terms of information being brought to the Commission. Particularly if there is not sufficient participant funding for the generic proceeding. The consequence can be more deficient outcomes for the Commission's decision making. This has been a most serious problem when the Commission decides that such a generic process will be conducted without any funding for intervener participation.

- v) Opportunities to make hearing processes more efficient and more focused;

The CEC experience is that generally the utilization of scope and issues lists by the Commission has ensured that hearing processes are focused. Rarely do hearings go beyond one week whereas years ago hearings dragged on for multiple weeks. The extensive use of Information Requests to try and deal with questions in advance has reduced hearing time and overall costs. The CEC welcomes opportunities to make hearing processes more efficient and more focused, balanced against the obligations of the

quasi-judicial tribunal to ensure that fairness and natural justice is followed in order to avoid reconsideration applications, or appeals to the courts which are generally more costly.

The CEC's view is that the focus of the Task Force needs to be primarily on the cost-effectiveness of the regulatory process. The CEC understands that sometimes the utilities may perceive that the regulatory process is a burden and particularly a cost burden. This terminology belies the issues in that the utilities fully recover all regulatory costs from their customers. They at times have complained about the inefficiency of the process. The CEC's experience is that the utilities when recommending reductions of regulatory costs can be and oftentimes are notably deficient in analyzing the benefits of the regulation and the potential net benefits of the processes.

- vi) The role, effectiveness and use of guidelines and policies;

The CEC believes that guidelines and policies have assisted in making hearing processes more efficient and more focused and has helped discipline the involvement of all parties in proceedings.

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

The application cycle and turnaround times for the various review and decision processes in the CEC experience have been fairly standard, with a few exceptions. The task of writing good quality decisions from extensive records on complicated applications is never an easy task. The Commission resources for doing this can likely be significantly stretched at times and turnover in Commission staff may result in loss of key experience and capability in the availability of this key resource. The CEC has found that the Commission has continued to deliver reasonably good service in a period of time where finding and retaining key resources is challenging.

- viii) Coordinated regulatory processes.

The Commission's regulatory role should involve coordinated process integrating different energy issue, such as gas and electric, as well as different regulatory management issues, such as environmental reviews.

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;

The CEC's view is that the stakeholder representation model in BC is as good as and perhaps better than many other models, although the CEC has not studied this area and does not have any extensive information. The CEC is not aware of any

information that has been compiled on the cost-effectiveness of different regulatory models for stakeholder representation.

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

The CEC does not have any information on staffing levels and or the recruiting, retention and compensation of BCUC staff and or Commissioners. What anecdotal information the CEC has and its long experience in observation from one side of the process would indicate that there may be value in examining this area.

Generally the CEC is of the view that these sorts of issues are the kind of things that the CEO's of an organization would deal with. The CEC is not certain that micro-managing the Commission from a Task Force will be as productive as ensuring that the CEO and leadership of the Commission are focused on optimizing these issues.

- c) Organizational structure and BCUC composition, including:

- i) Potential Vice-Chair and Executive Director positions;

The CEC is aware from past experience that it has been immensely helpful to have an individual with strong operational management skills in this sort of role. However, the internal structuring of an organization is in part dependent upon who is available and what their strengths are. The CEC expects that predetermination in a prescriptive sense from a Task Force could limit optimal leadership actions of a CEO in the future.

- ii) Full-time versus part-time Commissioners;

The CEC expects that Commissioners with a long term understanding of and responsibility for the regulatory processes would be a valuable component of the organization of the Commission and likely should not be precluded in terms of limiting the CEO to only part-time Commissioners. Balancing of workloads and regulatory agenda requirements is likely an issue again for the internal management and leadership of the Commission.

- iii) Experience and knowledge;

The CEC expects that the experience and knowledge within the Commission staff and the Commissioners should likely have an element of consideration with respect to understanding cost/benefit evaluation, costs and accounting, project management, budgeting and accountability reporting. As such it likely should be a key part of the internal considerations in managing the Commission and a key part of the government's considerations in selecting a CEO and leadership for the Commission.

- iv) The need for regulatory process and utility expertise; and

The CEC expects that experience and knowledge in the utility field and in regulatory management of utilities is an invaluable part of the Commission processes. As such it likely should be a key part of the internal considerations in managing the Commission and a key part of the government's considerations in selecting a CEO and leadership for the Commission.

- v) Use of BCUC Counsel.

The Commission as a quasi-judicial tribunal is constantly operating with the legal framework of the *Utilities Commission Act* and many other references for the legality of what the Commission does and decides. It is mandatory for the BCUC to have competent counsel throughout most of its activities, processes and decision making.

- d) Efficiency (value for money) and effectiveness of operations and performance, including:

The CEC recommends to the BCUC review Task Force that it should properly understand the value for money concept, efficiency concepts and cost-effectiveness concepts all separately before considering some of the following issues. Too often in the utility regulation context these are poorly understood and when they are frequently poor outcomes follow.

- i) Identify standard (reported) performance measures to be reviewed or recommend measures to be developed;

The CEC's input to the Task Force on this subject is to ensure that the measurement and accountability process for the Commission does not end up focused on only what is easy to count. The key cost-effectiveness values in the Commission's achievement of its purposes are critical to building a proper accountability framework between the Commission and Government as well as with key stakeholders.

- ii) Identify operational impediments; and

The CEC's recommendation to the Task Force is to focus on enabling the potential cost-effectiveness of the Commission's deliberative processes in relation to the Government's policy processes such that the combination becomes stronger and is not weakened by the operational exclusion of the contributions from each of their decision making modes.

- iii) Identify specific opportunities for improvements.

The CEC is aware that there are substantive energy issues actively working through various policy and regulatory processes now and that there are

clearly substantive ones ahead in the future. The most important area in which the Task Force can be productive is improving the relationship between the Commission, Government and Key Stakeholders. The CEC is of the view that this is where the greatest contribution to past cost-effectiveness has been achieved and where the future opportunities for cost-effectiveness achievements are to be found.