



cutting through complexity

## Task Force

### Performance and Operational Review of British Columbia Utilities Commission

September 2014

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## 1.0 Executive Summary

The Minister of Justice and the Minister Responsible for Core Review of the Government of British Columbia (the "Province") authorized an independent Review of the British Columbia Utilities Commission ("BCUC" or the "Commission") by a three-member task force (the "Task Force"). The Task Force's directive is to complete an independent review of the resource needs, the processes and the performance of BCUC with the goal of ultimately increasing BCUC's effectiveness and efficiency (the BCUC "Core Review"). In May 2014, the Task Force, through the Ministry of Finance, appointed KPMG to help with their BCUC Core Review.

### 1.1 Background

The BCUC is an independent regulatory agency of the British Columbia Government that operates under and administers the *Utilities Commission Act* (1980) (the "Act") to regulate BC's natural gas and electric utilities, intra-provincial pipelines (establishing tolls and conditions of service), district heating systems and universal compulsory automobile insurance (basic insurance) provided by the Insurance Corporation of British Columbia ("ICBC") under the *Insurance Corporation Amendment Act*.

The Commission's mandate is to ensure customers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates and that respective shareholders of those utilities receive a reasonable opportunity to earn a fair return on their invested capital. The Commission is also responsible to ensure that Basic Insurance rates from ICBC are adequate, efficient, just and reasonable.

### 1.2 Understanding this Report

The purpose of this report is to outline certain matters that came to our attention during our work and to offer our comments and considerations for the Task Force. These comments, by their nature, are critical as they relate solely to opportunities for change or enhancement and do not address the many strong features of the BCUC's current activities and undertakings.

As outlined below, our procedures consisted solely of inquiry, observation, comparison and analysis of BCUC-provided information, as well as information researched and received from other regulatory jurisdictions outside of British Columbia. Such work does not constitute an audit or a review of financial statements and accordingly, we express no opinion in this regard. As discussed in Section 3.2.2, KPMG has neither audited nor reviewed the underlying data that underpins the BCUC or other jurisdictional areas that forms part of the basis of this report.

KPMG's work steps included:

**Step 1** – Development of an Organizational Framework and Key Effectiveness Principles of a Regulator to use in our Review and Assessment of the BCUC.

Our first step was to develop a robust organizational framework for a regulator. This framework was used throughout this project to provide structure to our research and analysis and this structure is used in this report to communicate our findings.

To assess the BCUC against this organizational framework and specifically conduct a performance and operational review of the BCUC, we also required assessment principles to identify and describe performance and operational challenges of the BCUC. KPMG performed a literature review to identify key effectiveness principles for both a service related organization and a regulator in developing these principles for our assessment and they are summarized below and more fully described in Section 3.4:

Principles of an Effective Regulator			
1.	Clarity of Mandate and Scope – includes Leadership and Governance	8.	Strong Practices, Policies, Procedures, Controls and Strategic Plans
2.	Good Communication with stakeholders	9.	Effectiveness and Efficiency of operating and regulatory processes
3.	Effective and early Consultation among regulators, customers, key stakeholders, utilities and those with unique standing (such as First Nations)	10.	Qualified, Skilled, Trained and Talented Commissioners and Staff
4.	Consistency in treatment of regulated entities	11.	Ability to Mobilize Others , including other businesses, consultants and government /government agencies
5.	Predictability of regulatory decisions	12.	Embracing Technology for Mission
6.	Flexibility in use of alternative and strategic regulatory processes	13.	Ethical, Accountable and Transparent
7.	Independence	14.	Resources Empowered

**Step 2** – Review of the Organizational Framework of the BCUC, including their Structure, Key Processes, Operational Information and Current Challenges.

We collected BCUC operational information to understand BCUC’s current performance and efficiency and effectiveness challenges. This included undergoing reviews of a number of recent BCUC regulatory hearings, as well as interviews with BCUC Commissioners, and BCUC staff. We refer to the reviews of the specific regulatory hearings as ‘case examples’ in the document, although the scope of our review was limited as we describe in Section 3 and Appendix C.

To compare BCUC against leading practice, we also obtained information on a select peer group of North American regulatory bodies to benchmark against BCUC. This included a search of publicly available metrics and information as well as collecting data and conducting interviews with regulatory staff from those jurisdictional bodies.

**Step 3** – Research Global and Other Alternative Metrics and Processes.

We considered globally other known alternative efficiency and effectiveness metrics and processes that may be relevant in benchmarking, and conducted a literature review.

**Step 4** – Analysis of Information and Resulting Considerations.

This includes preparation of our report, which summarizes our findings, including views on the BCUC, for consideration by the Task Force and discussion on next steps.

A detailed description of KPMG’s project steps is included in Section 3.2 and in Appendix C.

Our field work was conducted during the period from May 14, 2014 to September 5, 2014.

### 1.3 Key Findings

Regulation is, at its core, a question of balance. For example, in the case of process and performance, there may be tension between process efficiency and the depth and breadth of

regulatory review. In a rate hearing, the requirement to provide for a full and comprehensive investigation of issues can work against the desire for timely decision making and for lesser regulatory burden and related costs. Regulators have always faced the problem of “information asymmetry”. Regulated entities have more information on their cost structure and management processes than the regulator and they may not have an incentive to disclose this information.

Regulators like the BCUC need to find the right balance and maintain an open and accessible process while, in addition, searching for process improvements that reduce the tension between the competing objectives noted above.

The peer group jurisdictions reviewed have different mandates and are of different sizes to the BCUC, but their regulatory models and processes are very similar. They are therefore useful to provide a reference point and insight in addressing the BCUC matters identified below.

Our review overall highlighted a number of efficiency and effectiveness challenges and related opportunities for change at the BCUC and they are discussed below.

Key Findings	Related Effectiveness Principles
<p>■ Mandate and Scope</p> <p>The BCUC has experienced significant growth in certain areas of the scope of its mandate, which is consistent with other peer jurisdictions. Interviews performed and BCUC metrics over the last five years highlight the growth, complexity and expanded types of applications, new laws and other special directives from Government and a general heightened interest by outside parties, particularly regarding infrastructure development. Examples of some of the specific topic areas raised include utility business model complexity, evolving customer relationships, and infrastructure investment complexity.</p> <p>Conversely, although overall levels of activity and scope have grown, the BCUC has had some reduction in scope and work-load as BC Hydro (“BCH”) rates have been set by the Province until April 2016, then capped for an additional three years. Also, many BCH capital projects have been exempted from BCUC review.</p> <p>BCUC has struggled to effectively manage its scope and scope changes through strategic resource re-allocation, strategic direction, interaction with the Province and the implementation of necessary efficiency and effectiveness improvements discussed more fully below. Other peer jurisdictions articulate a more strategic and proactive approach to the constantly changing regulatory environment than is apparent at the BCUC. Examples of other jurisdiction’s more strategic approaches include using more risk-based and performance-based approaches to regulation. BCUC needs to become more flexible in the regulatory processes it considers and utilizes. This includes for example, initiatives such as moving to more risk-based or performance based or self-regulatory approaches, among others.</p>	<ul style="list-style-type: none"> <li>● Flexibility of strategic processes</li> <li>● Clarity of Mandate and Scope</li> <li>● Leadership and Governance</li> <li>● Flexibility of strategic processes</li> </ul>

<p>■ <b>Interaction with Government</b></p> <p>BCUC is not resource empowered and this currently impacts its ability to be an effective regulator.</p> <p>There has been a strain on the quality, the mix and in certain areas, the quantity of human resources at the BCUC, as well as a lack of investment into available technologies at the Commission. The low compensation levels relative to market of Commissioners and professional staff, short terms of Commissioners and a high ratio of part-time Commissioners negatively impacts the specialized knowledge and skill available at the BCUC.</p> <p>The strain on the BCUC is increased by the fiscal restraints imposed on the organization by operating within the budgetary confines of the Province regarding compensation levels. This restraint also includes limitations on investment in information technology and tools, as the BCUC is financially and resource restricted to using only BC Shared Services Information Technology providers and Province compliant and supported software programs.</p>	<ul style="list-style-type: none"> <li>● Strong Practices, Policies, Procedures and Controls</li> <li>● Resource Empowerment</li> <li>● Qualified and Talented Commissioners and Staff</li> </ul>
<p>There appears a lack of direction from the Province to the BCUC, particularly when Provincial energy plans and policy positions are being introduced. As a result, when changes to policies are being considered and when matters are already before the BCUC, the approach at present between the Province and BCUC appears reactive. This results in, at times, inconsistent or insufficient direction from the Province, causing delays in proceedings.</p> <p>There is also a current practice of Utilities going directly to the Province in areas that are new or potentially contentious. This approach brings inconsistency in scope application and also in applicant's interactions with the BCUC (and the Province) over policy direction. As a result, BCUC lacks clarity in its mandate and scope due to interaction processes with the Province not being more formally defined.</p>	<ul style="list-style-type: none"> <li>● Clarity in Mandate and Scope</li> <li>● Good Communication and Consultation with stakeholders</li> </ul>
<p>■ <b>Strategy and Governance</b></p> <p>Executive leadership of BCUC vests primarily in one individual, being the current CEO/Chair of the BCUC. This is unusual compared to the peer jurisdictions. Currently, all directors and Commissioners report to the CEO/Chair. Under this structure, the CEO/Chair's time and expertise is split between his role as the sole full-time Commissioner and leading the day-to-day operations of the BCUC. This stretches the capacity of any individual to effectively run the Commission. For example, strategic initiatives of the BCUC have been documented and are aimed to improve efficiency and effectiveness of processes. However, there is little evidence of prioritization or accountability to get these strategic aims implemented. As a result, these initiatives are not being completed as expected.</p>	<ul style="list-style-type: none"> <li>● Leadership and Governance</li> <li>● Qualified and Talented Commissioners and Staff</li> </ul>
<p>As an independent regulatory agency within the Province, the BCUC should be accountable and transparent in its operations to its stakeholders. However, documented strategic initiatives, the measurement of performance of operations and assessment against strategic initiatives, does not appear to be fully performed and disclosed. Such activities are seen as leading practice.</p>	<ul style="list-style-type: none"> <li>● Leadership and Governance</li> <li>● Ethical, Accountable and Transparent</li> </ul>
<p>■ <b>Operating Model: Use of Commissioners</b></p>	<ul style="list-style-type: none"> <li>● Consistency</li> </ul>

<p>Other peer jurisdictions have a higher proportion of full-time Commissioners in their operating model. The BCUC has only one full time Commissioner, being the CEO/Chair, with the rest all part-time Commissioners. Interviews with other regulators highlighted that full-time Commissioners provide greater flexibility and simpler interactions with staff. Furthermore, the part-time availability and use of up to 10 part-time Commissioners at the BCUC was felt to be a cause of some inconsistency and inefficiency in hearing processes. Lacking consistency and predictability in regulatory process outcomes hampers BCUC’s ability to be efficient and effective.</p> <p>Other jurisdictions (e.g. Alberta and Ontario) which had a high number of part-time commissioners, had commissioners with deeper and more relevant energy-related experience assisting in their abilities to be effective. Our view from the profiles of the BCUC Commissioners was there was less utility-specific experience than profiles in other jurisdictions.</p>	<ul style="list-style-type: none"> <li>• Predictability of decisions</li> </ul>
<p>■ Interaction with Stakeholders and Related Regulatory Processes</p> <p>The Province does not have a formal public advocacy body or department that is involved in BCUC’s hearing processes to-date and it is common for broad public interests not to be fully represented in BCUC proceedings in general. Intervenor currently represent special interests or subsections of the customer group, e.g. industrial customer, old age pensioners, etc. As a result, BCUC Commissioners and staff look to ensure that the interests of unrepresented groups (often the general public as a consumer) are represented in the regulatory hearing processes.</p> <p>BCUC staff acknowledges that, given the sensitivity of regulating utilities in the public interest, their role ‘blurs the line’ between an advocacy role and the role as an independent regulator, when intervenors collectively do not represent all customers.</p> <p>Staff consciously do not offer solutions and negotiate on behalf of consumers, as found in a full public advocate role, due to the sensitivities of their role for the benefit of the broad public interest. Other jurisdictions have a formal public advocate entity that functions outside of the regulatory body. Independence, including the perception of independence, is required to sustain the trust of stakeholders. Furthermore, without strategic guidance to Commissioners and staff in this area, the “zeal” and focus with which this inquiry “in the consumer’s interest” advocacy is undertaken will vary, and at times may be construed as “special interest” advocacy.</p>	<ul style="list-style-type: none"> <li>• Ethical, Accountable and Transparent</li> <li>• Independence</li> </ul>
<p>The special interests of intervenors may not always align with the issues in the application, and comments from Commissioners indicate the ‘pendulum’ has, perhaps, swung too far towards the pursuit of intervenor interests. Out-of-scope intervenor interactions in hearings is a common issue both at the BCUC and other peer jurisdictions. Management of scope is best addressed initially and during the proceeding through management by the Commission Panel and Applicant.</p> <p>“Standing” of intervenors has become an increasing concern of late, in particular related to proceedings related to capital projects. For example, other jurisdictions have tightened standing legislation and from discussions with BCUC staff, rarely does the BCUC reject an application from an intervenor to participate in a hearing.</p> <p>Generally, intervenors have a right to participate. However, the common issue is that they have both in-scope and out-of-scope issues. The BCUC professional staff and Commissioners need training and improved formalized</p>	<ul style="list-style-type: none"> <li>• Strong Practices, Policies, Procedures and Controls and strategic planning</li> <li>• Good Communication with stakeholders</li> </ul>

<p>processes and strategies to determine appropriate standing and to manage out-of-scope items for those with standing, which lead to burdening the hearing process.</p>	
<p>BCUC Information Requests (“IR”s) are growing significantly on applications. Interviews with BCUC staff highlight that some of these Information Requests are not subject to material or relevance reviews and are issued without adequate consideration, planning and monitoring controls (e.g. lead staff pre-issuance review). Inappropriate Information Requests can and do significantly increase the costs and time of hearings by increasing the process burden on all participants without material benefits.</p>	<ul style="list-style-type: none"> <li>● Strong Practices, Policies, Procedures and Controls and strategic planning</li> </ul>
<p>Application pre-screening undertaken by the BCUC lacks consistency of approach, including policies, procedures and controls to be effective and promote efficiency. For example, there is no checklist of minimum quantity, quality or format of information to be filed.</p> <p>Furthermore, there is limited and inconsistent pre-application planning or consultation with the utility applicant and other stakeholders to review the key issues and agree on the minimum information that will be required for the proceedings. Other jurisdictions do provide more guidance to proponents for their applications.</p> <p>Even once an application is filed, there appears to be limited planning and agreement on what the key issues of the case are, in order to guide subsequent inquiry and focus Information Requests through the interrogatory stages of the application.</p>	<ul style="list-style-type: none"> <li>● Consistency</li> <li>● Strong Practices, Policies, Procedures and Controls and strategic planning</li> <li>● Key issue identification</li> </ul>
<p>■ Operational Processes including Staffing and Information Technology</p> <p>Basic project and process management appears to be inconsistently applied across the BCUC functions on different application hearings. Consistency and predictability of regulation are important to the effectiveness of the BCUC. While each application is unique, it was noted by staff that process was not consistently executed.</p> <p>BCUC currently does not have fully documented internal process documentation for staff to adhere to as found at other peer group regulators. Effective process documentation would be expected to cover all of its operational and regulatory processes and be written strategically to promote process efficiency and effectiveness. These documents would cover best practice policies and procedures and related controls, and explain key roles, key responsibilities and accountabilities for Commissioners, Chair of Commissioners, directors, professional and support staff.</p> <p>Regular training over key processes were stated as needed by staff and is a key component of effective process execution.</p> <p>Comparative analysis to other jurisdictions shows that on a total cost basis (or on a per regulated customer or a percentage regulated revenue basis), the Commission’s operating costs are low compared to other regulators. BCUC’s resources are constrained, actual costs are rising and have exceeded budget levels in recent periods. On its own this rise in expenditure, or peer group comparison, does not indicate that the BCUC is overall efficient or could not be more cost effective, as there are specific examples where proceedings and processes could be more efficient and effective.</p> <p>The efficiency and effectiveness challenges we note highlight that operating costs may be too low and are insufficient to support needed efficiency and effectiveness measures. However, as we note below in the 1.4 Considerations section, it is difficult to state what an appropriate cost base is for the BCUC until a review over BCUC scope and strategic direction, combined with an assessment of appropriate resource allocation, is</p>	<ul style="list-style-type: none"> <li>● Leadership</li> <li>● Strong Policies, Procedures and Controls, Training</li> <li>● Consistency</li> <li>● Predictability</li> </ul>



undertaken. Only after this realignment is done, would revisiting the cost efficiency be recommended.	
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## 1.4 Considerations for Course of Action

In the following sections, we offer considerations for the Task Force to review relating to the BCUC that can, if appropriately implemented, assist the BCUC to strengthen its practices including efficiencies and effectiveness in a number of areas.

We have grouped our recommended course of actions under the following themes:

- **Mandate and Scope**
  - Consider a strategic review over current BCUC scope and regulatory approach (e.g. moving to more of a principle or risk-based regulatory oversight model(s)). This may include a review of “low risk” or “low value-add” regulatory processes to identify those which may be stopped or managed more effectively.
  - In addition, consideration should be given to the articulation of a philosophy of regulation. As an example, the regulator could consider regulatory intervention when there is a demonstrated failure of market mechanisms which either comes to light through its compliance activities or customer complaints. This could also lead to a greater focus by the BCUC on regulatory economics rather than solely regulatory process compliance.
  - This strategic review should include an assessment of resources currently utilized and recommend where resources should be re-directed and where investments in either quality or quantity of resources are needed (i.e. human resource capital plan). BCUC should prioritize regulatory resources on risk areas and use greater discretion on strategies to achieve a set of targeted broader based objectives.
  - The proposed strategic review should include the assumption that full-rate regulation over the BCH’s rates and capital projects will return to the scope of the BCUC.
  
- **Interaction with Government**
  - The roles, responsibilities and authority levels of both the BCUC and the Province need to be more clearly agreed and described in ways that promote consistent, effective and efficient interactions. These guidelines should cover reporting requirements of the BCUC to the Province, as well as protocols of interaction and updates of regulated market developments. This interaction includes, for example, when more urgent financial and operational needs exist or policy changes are anticipated, and when new policy guidance or assistance is required.
  
- **Strategy and Governance**
  - The BCUC’s executive leadership requires restructuring to assist both oversight of regulatory policy and also broader operational responsibilities related to strategy, governance, performance monitoring, executive operations and decision making at the BCUC.
  - BCUC leadership, including directors, needs to provide better strategic guidance to the organization. This guidance must identify actions that meet BCUC strategy and develop suitable metrics to monitor the Commission’s performance, identify issues and resource needs; generally manage the efficiency and effectiveness of the operations of the BCUC; and communicate its financial and operational performance to the Province and stakeholders.

- Operating Model: Use of Commissioners
  - BCUC should consider transitioning to more full-time Commissioners from part-time Commissioners to ease process inconsistencies and inefficiencies. Part of this transition to more full-time Commissioners should include a revisit, with the Province, of the mix of backgrounds and qualifications with regard to any changes to the BCUC's mandate and scope.
- Interaction with Stakeholders and Related Regulatory Processes
  - The need for a formal public advocacy body in British Columbia, that is independent from the Commission, should be reviewed. The roles, responsibilities, funding and governance of a public advocate, including the ability to negotiate positions on behalf of the general consumer should be documented.
  - A consistent and more rigorous intervenor screening process should be considered, with updated 'Recognition of Standing' criteria applied. This consideration may require Government legislation or directives to achieve its aims.
  - Intervenor participation processes need to be improved, documented and supported through the training of Commissioners and professional staff on techniques to keep intervenor involvement on scope, including (1) communication of the expected scope through a standard scope development step, with the applicant and stakeholders before (or early in) the application process (2) reinforcing communication at the application stage that funding will not be extended to out-of-scope participation and (3) management of scope during the hearing process. Review of intervenor funding requests should explicitly address out-of-scope matters and the Commission should reinforce the importance of keeping the proceedings within the agreed scope.
  - Commissioners, with input from lead staff, should confirm strategic priorities for inquiry at the beginning of an application review. IRs drafted by staff should then focus inquiry on these matters. Commissioners, lead staff and staff require additional training to issue effective IRs. The basic goal and information needs of IRs should be evident and discussed and agreed upon by lead staff and the Commissioners at the planning stages of the application and as required during the hearing process. Consideration should include expanding the involvement of Commissioners in the review of IRs before they are issued.
  - A consistent and rigorous utility application screening process needs to exist internally and communicated externally to applicants for each type of application. Current guidelines which exist on the website need updating and require more detail clearly showing what is expected and how it is to be presented, depending on the actual facts and circumstances. As each application is unique, requiring new or alternative focus and information, a more formalized and standard pre-application strategic planning process with the utility applicant (and stakeholders) is needed. This screen should summarize the key issues, as well as communicate the expected and/or agreed upon information required in applications so as to avoid rejection or avoid recommendation of re-submission. This process could also support informal reviews of applications where discussions and comments on draft applications could be provided, where appropriate.
  - Commission staff should initiate more structured post-decision reviews of the process, with input from applicant and intervenors, in order to identify process elements which worked effectively so they can be repeated and those elements which can be improved.
- Operational Processes including Staffing and Information Technology
  - Consider strengthening the leadership capacity of the organization with the appointment of a Chief Operating Officer (COO) and providing more formal leadership development for Directors and senior staff.

- o As part of the proposed strategic review of the Commission, review the skills competencies and identify skill areas which could better support the efficiency and effectiveness of the Commission. Examples may include, a senior staff legal position and strengthening the market economics and regulatory economics capabilities in the staff complement. This would provide more capability within the Commission to leverage market factors to fulfill its mandate while also ensuring that it is meeting all of its legislative obligations.
- o Documented strategic guidelines, using efficient and effective policies and procedure and control requirements should be in place for all hearing process types and topics covered (e.g. revenue requirements, rate design, capital applications ('CPCN'), etc.). Many of the existing guidelines used internally and published externally for stakeholders are outdated and not written with this in mind. These guidelines should document leading practice policies and procedure requirements and ensure consistency for all staff levels and Commissioners and stakeholders.

The documentation of guidelines should formally address, among other things, the requirement to apply project management skills into processes undertaken by the BCUC, including for example:

- Clarify roles, responsibilities and accountabilities.
  - Establish consistent interaction between staff and Commissioners.
  - Establish responsibilities to budget, monitor and report hearing statistics, including performance against planned timelines.
  - Ensure appropriate review of Commission communications and deliverables (e.g. review of BCUC information requests for quality and relevancy).
  - Provide direction, documentation and consistency over the use of risk and materiality thresholds when considering hearings requirements.
  - Undertaking formal debriefing sessions.
- o Compensation levels (including incentive schemes) for both staff and Commissioners should be reviewed to be more competitive. For example, target remuneration levels should be compared with current market levels in the staff and Commissioner recruiting process.
- o Commissioners should be formally monitored and be subject to individual performance appraisal processes.
- o Organizational data and performance metrics should be developed, monitored and performance results reported and periodically assessed against peers.
- o A robust IT strategy for the BCUC should be developed and implemented. This includes tools, systems and information networks which support the information needs for regulatory applications and decisions, compliance monitoring, interacting with interested parties in the regulatory processes, providing public access and communication, internal financial management, internal process management and the management of the organization's human resources. This includes, for example, an understanding of tools and database search engines used by other regulators. The IT review should include knowledge-management improvements as a priority to address risks of loss of hearing precedent data, which is often vested with key individuals in the BCUC. There may also be a need to have in-house IT resources to support such changes. This strategy and implementation plan should align with and to the extent feasible, leverage the IT system capabilities of the Province.
- o The BCUC should continue to strive to implement technology to allow on-line applications and continue to allow video conferencing to encourage expanded participant participation by those that would otherwise incur or be deterred by travel costs for themselves and/or expert

witnesses etc. Such technology will help increasing accessibility of the Commission and thus its credibility in the eyes of the public.

## **1.5 Next Steps**

The Commission is a key component to the effective and fair operation of British Columbia's power and utility and basic automobile insurance industry. A very effective regulator has to be a high achiever of all of the Principles of an Effective Regulator as discussed in Section 3.4.

The Task Force's next steps should be:

- 1) As a priority, the BCUC should be refocusing its scope and mandate, developing a strategy to meet these goals and implementation of improvements in both tools and processes.
- 2) All subsequent recommended efficiency improvements for the BCUC would then need to be prioritized and also categorized between short-term (i.e. immediately or within one year) and long-term (more than one year or over a number of years) recommendations; and
- 3) Only once the above steps are taken, should there be consideration to either increasing resources or pursuing further efficiencies in its operations.

Given our findings to date, it is not currently possible to estimate the magnitude of the expected changes required in budgeted BCUC operating costs over current levels in the short-term and long-term until these strategic steps are completed. However, our expectations would be that costs will need to be incurred to undertake the proposed strategic review. Recommended efficiency improvements would be expected show cost reduction benefits over time.

## **1.6 Acknowledgement**

KPMG has appreciated:

- The opportunity to serve the BCUC and the Task Force.
- The excellent level of cooperation from the project participants for pulling together background materials and their participation in our interview process, and
- The frank and open input received from all interviewees.

Vancouver, Canada  
September 17, 2014

## **2. Purpose of the Report**

The Minister of Justice and the Minister Responsible for Core Review of the Government of British Columbia ("BC") authorized an independent Review of the British Columbia Utilities Commission ("BCUC" or the "Commission") by a three-member task force (the "Task Force") due in part from feedback received from customer groups and utilities at a recent Industrial Electricity Policy Review ("IEPR") and recommendations of the IEPR Task Force. The Task Force's directive is to complete an independent review of the resource needs, the processes and the performance of BCUC with the goal of ultimately increasing BCUC's effectiveness and efficiency.

The Province engaged KPMG to conduct a performance and operational review of the BCUC. This review included possible considerations for the Task Force to strengthen BCUC's performance through efficiency and effectiveness improvements. Our report documents the results of KPMG's review. The procedures performed by KPMG are limited in scope, as directed by the Task Force, and are summarized in Section 3, Background and Approach.

## 3. Background and Approach

### 3.1. Introduction to the BCUC

The BCUC is an independent regulatory agency of the British Columbia Government that operates under and administers the *Utilities Commission Act* (1980) (the "Act") to regulate primarily BC's natural gas and electric utilities, intra-provincial pipelines, district heating systems and universal compulsory automobile insurance (basic insurance) provided by the Insurance Corporation of British Columbia (ICBC) under the *Insurance Corporation Amendment Act*.

The Commission also reviews energy related matters referred to it by Cabinet under Section 5 of the Act and approves the construction of new facilities planned by utilities and their issuance of securities. In addition to the above regulatory responsibilities, the Commission also reviews complaints about utilities' actions, responds to general information requests; and provides Commission prepared brochures, guidelines, Orders and Decisions and other information on current and historical hearings.

The authority of Commissioners is provided by the Act. BCUC acts as quasi-judicial body with the power to make legally binding rulings and therefore must maintain standards of due process and fairness, and cannot be seen to act arbitrarily and without process legitimacy, stakeholder support and evidence supporting its decisions. Decisions and Orders may be appealed to the Court of Appeal on questions of law or jurisdiction.

The Commission's mission or mandate is to ensure that customers receive safe, reliable and non-discriminatory energy services at fair rates from regulated utilities in BC and that respective shareholders of those utilities receive a reasonable opportunity to earn a fair return on their invested capital. The Commission is responsible to ensure that Basic Insurance rates are adequate, efficient, just and reasonable. The Commission is expected to fulfil this mandate in a manner that is consistent with policies of the Province, in an independent manner and through a process that is accessible to all interested parties.

BCUC's Organizational Framework is further detailed in Appendix A.

### 3.2. KPMG Project Overview

#### 3.2.1. Approach

KPMG's first step was to develop its view of a standard organizational framework of a regulator and also develop a list of key principles of an effective regulator. The organizational framework was developed from desktop research and historical knowledge and experience and was used throughout this project to provide structure to our research and analysis (e.g. as a basis for internal and external interview guides and data collection templates) and is used in this report to communicate findings. To assess the organizational framework of the BCUC and specifically conduct a performance and operational review, we required assessment principles to be identified and describe performance and operational challenges (and solutions) of the BCUC.

KPMG performed a literature review to identify key effectiveness principles for both a not-for profit service organization and also those specific to a regulator in developing these principles. These principles, if operating effectively together, lead to overall operational effectiveness. These underlying principles include both efficiency and effectiveness principles over key regulatory and operational processes. Detailed findings from each of these activities are included in Sections 3.3 and 3.4 and are referenced throughout.

For the second step in conducting our performance and operational review of the BCUC, KPMG had to understand the organizational framework of the BCUC, including its structure, key processes, operational information and identify its current performance and efficiency and effectiveness

challenges. This included BCUC Commissioner and staff interviews, and reviews of a number of specific BCUC regulatory hearings undertaken in recent periods. These specified regulatory hearings are referred to as 'case examples' in this report, although the scope of our review was limited only to an analysis of the related decision and action memorandums and interviews with BCUC staff. The Task Force briefed us on their observations and we also read the interim consultation summary of the Task Force detailing the results of their interviews of stakeholders. Secondly, KPMG obtained similar and standard qualitative and quantitative information on a select peer group of North American utility boards and commissions to benchmark BCUC against.

Thirdly, we considered other known global efficiency and effectiveness metrics and processes that may be relevant in benchmarking, and conducted a literature review. Detailed findings from each of these activities are included in the appendix and referenced throughout.

Finally, the above information was reviewed, assessed and analyzed to identify performance and efficiency and effectiveness matters of the BCUC, identify where improvements could be made, and also identify alternative considerations for the Task Force. These findings and considerations make up the body of this report in Section 4.

Each of the above steps, including scope restrictions applied, is discussed further in Appendix C.

We were asked by the Task Force if it was practical to quantitatively assess both the costs and benefits of regulation in British Columbia to affected parties, including utilities and ultimately ratepayers. Although various methods and approaches were considered, no approach was viewed as effective and practical in quantifying costs and benefits attributed solely to regulation, separate from other influences. As a result, this assessment was removed from the scope of KPMG's review. However, we did identify areas of regulatory leading practice from a limited global literature review and we include these thoughts in Appendix D.

In summary, in conducting our performance and operational review of the BCUC, KPMG's review process involved the following four steps:

- Step 1 – Develop an Organizational Framework of a Regulator and also Key Effectiveness Principles of a Regulator to use in our Review and Assessment of the BCUC
- Step 2 – Review the Organizational Framework of the BCUC and of a Select Group of North American Utility Boards and Commissions, including their Structure, Key Processes, Operational Information and Current Challenges. Specifically, the Task Force requested that we benchmark BCUC operational metrics against the following peer regulatory utility boards and commissions in other North American jurisdictions including:
  - Manitoba Public Utilities Board ("MPUB")
  - Ontario Energy Board ("OEB")
  - Québec Régie de l'énergie ("QRE")
  - Alberta Utilities Commission ("AUC")
  - Nova Scotia Utility and Review Board ("NSUARB")
  - Washington (State) Utilities and Transportation Commission ("WSUC")
  - Oregon Public Utility Commission ("OPUC")
  - National Energy Board ("NEB")
- Step 3 – Identify Global and Other Alternative Benchmarking Metrics and Processes to Compare/Benchmark BCUC Against
- Step 4 – Review and Analysis of Comparison / Benchmarking BCUC information with Peer Jurisdictions and Other Information and Develop Resulting Conclusions and Considerations

Details on each of these four steps, including key activities, scope, list of BCUC interviews, list of case examples, list of peer jurisdiction interviews and data collected can be found in the Appendices.

### 3.2.2. Limitation of Scope

#### *Restrictions on distribution*

This report has been prepared by KPMG LLP (“KPMG”) for the Task Force pursuant to the terms of our engagement agreement with the Ministry of Finance dated May 14, 2014 (the “Engagement Agreement”). KPMG neither warrants nor represents that the information contained in this report is accurate, complete, sufficient or appropriate for use by any person or entity other than the Ministry of Finance or for any purpose other than set out in the Engagement Agreement.

Within this report, the source of the information provided has been indicated. Our review was limited to the information obtained through interviews and the documents provided. KPMG has not sought to independently verify those sources unless otherwise noted within the report.

The information contained herein is for the use of the Task Force and the Ministry of Finance. It is understood that this report may be distributed by the Ministry of Finance externally to the BC Utilities Commission as part of the regulatory process or to other BC Government entities or other entities. KPMG disclaim any responsibility or liability for losses, damages, or costs incurred by anyone as a result of any external circulation, publication, reproduction, or use of the information contained herein.

#### *KPMG engagement limitations*

Our engagement is to review the resource needs, the processes and the performance of BCUC with the goal of ultimately increasing BCUC’s effectiveness and efficiency based upon the results of procedures outlined in Section 3 and Appendix C of this report. Our procedures consisted solely of inquiry, observation, comparison and analysis of BCUC-provided information, as well as information researched and received from other regulatory jurisdictions outside of British Columbia. Such work does not constitute an audit or review of financial statements and accordingly, we express no opinion in this regard.

Furthermore, our evaluation does not constitute an audit of the BC Utilities Commission or its resource needs, processes or performance, neither have KPMG audited any of the sources of information included within this report. Accordingly, we do not express any such opinion on these matters. For avoidance of doubt, KPMG has neither audited nor reviewed the underlying data that underpins the BCUC or other jurisdictional areas that forms part of the basis of this report.

## **3.3. Organizational Framework**

### 3.3.1. Organizational Framework

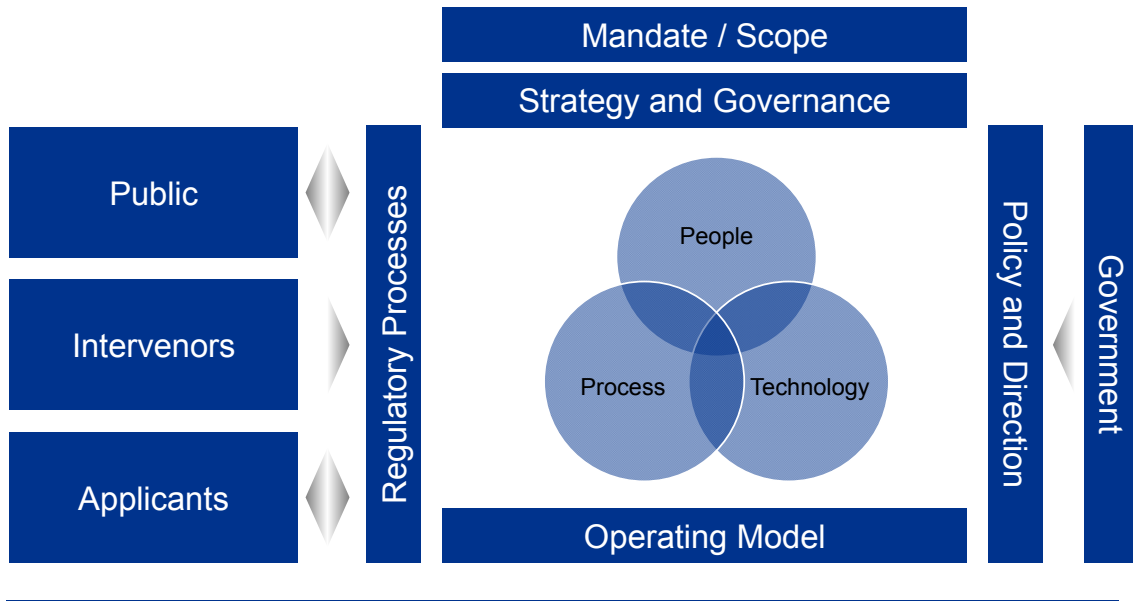
To carry out our performance and operational review of the BCUC, KPMG utilized a standard organizational framework of a regulator. This framework covers the key organizational elements of a regulator, some of which are applicable to any not-for profit organization, and has been aligned to the scope of our mandate from the Task Force.

The framework provides an illustration of the key organizational elements of a regulator. This includes its mandate, strategy, operating model, the regulatory processes it delivers, the resources it has to



deliver service, i.e. people, process and technology, and how it interacts with participants and stakeholders such as the public, intervenors, applicants and government.

**Figure 1: Organizational Framework**



This organizational framework has been used throughout the project to provide structure to our research and analysis (e.g. as a basis for internal and external interview guides and data collection templates) and is used in this report to communicate findings in Section 4.

### 3.3.2. Mandate / Scope

Mandate / Scope covers topics primarily pertaining to the acts and regulations under which a regulator operates. Key matters of mandate and scope pertain both to the industries regulated, for example electricity and gas utilities, and the types of issues which are in scope of the regulator, such as economics, pricing, impact on the environment, and aboriginal issues. Other important topics include: method of regulation, tools that exist within the acts and regulations that provide regulators flexibility or direction in fulfilling their mandate, describing the latitude the regulator has in initiating regulation actions, channels for appealing decisions or requesting reconsiderations, and innovation or recent changes within the act and related processes.

### 3.3.3. Interactions with Government

Interactions with Government includes all manners in which a regulator and a government communicate, as well as the level of independence that a regulator has from government. Topics and potential channels for interaction include changes to legislation and regulations, setting policy, providing special directives, participating in proceedings as intervenors, and other less formal meetings, collaboration or communication. Also included in this portion of the framework is the government's role in funding, supporting or otherwise exercising control over a regulator. Fundamentally these interactions describe the extent to which the regulator is solely performing a regulatory function to ensure market effectiveness or if the regulator is also fulfilling a role as an instrument of public policy for the government.

### 3.3.4. Strategy and Governance

Topics relating to Strategy and Governance are broadly grouped into two categories and specifically focuses on the executive leadership role(s) within an organization, commonly the CEO, Chair and/or COO. The first category includes leadership and strategic direction on key regulatory issues. This captures direction given to boards, commissioners and government on their roles and responsibilities. It includes strategic direction on important decisions before the commission affecting stakeholders. In cases where the regulator is fulfilling a market regulation role, such input is likely more general on how guiding legislation could make the regulator more effective in meeting its mandate. In the case where the regulator is a policy instrument for government, this includes providing input to government (outside of specific proceedings) on how the regulator can be more effective in being such a policy instrument.

The second category is leadership and strategy related to the regulator as an effective organization. This includes setting a vision and strategy for the organization which responds to market trends, changes and expectations on the regulator, leadership and management of staff, and delivering on this strategy through strong performance management and organizational improvement. It also includes the overall effectiveness of the regulator in fulfilling its mandate, potentially as measured by any established metrics, independence, quality of decisions, credibility with stakeholders and outcomes for the general public.

### 3.3.5. Operating Model and Structure

Operating Model and Structure focuses internally on a regulator's organizational structure and its internal regulatory and operational processes, including the people and technology that support its efficiency and effectiveness. Generally, people, processes and technology refers to the capability domains within which a regulator has to conduct and manage its activities such that it fulfills its mandate and delivers on its vision and strategy.

People includes topics such the number of staff, the alignment of their capabilities to the needs of the regulator, and the means by which they are recruited, managed and rewarded (e.g. performance management processes).

Processes includes topics such as the documentation and use of consistent, transparent and effective processes, the management of processes, and process improvement. These processes focus on activities internal to the regulator in order to effectively manage the Regulatory Processes, the fulfillment of its strategy and the management of the organization itself. Regulatory Processes include the processes by which a regulator carries out its mandate. Commonly this includes processes relating to managing regulatory applications, managing compliance, and carrying out inquiries. Operational processes relate to processes over leadership and governance, strategic planning and performance management and assessment of the organization.

Technology includes topics related to strategy, operation and sustainment of information technology which allows the regulator to more efficiently manage its activities. This includes tools, systems and information networks which support the information needs for regulatory applications and decisions, compliance monitoring, interacting with interested parties in the regulatory processes, public access and communication, internal financial management, internal process management and the management of the organization's human resources. Elements include a clear technology strategy, tools to effectively deliver services efficiently, accessibility to precedent and past regulatory documents and communication and connectivity to ensure access and appropriate transparency for the public and interested parties.

This section includes topics such as the regulator's organizational structure, executive positions and the scope of their responsibilities, board structure and responsibilities (e.g. part time versus full time commissioners, role of staff members versus commissioners), and any role the regulator plays as an advocate. It also includes the policies, procedures and controls over its internal processes. The

regulator's vision and strategy balanced against its capabilities and specific work volume may guide the appropriate model and structure.

### 3.3.6. Interaction with Stakeholders and Related Regulatory Processes

Regulatory processes focus on the means by which the regulator interacts with the public, applicants, intervenors, regulated entities and other stakeholders in order to fulfill its mandate.

It includes topics such as the effectiveness with which regulatory responsibilities are managed and carried out, such as through the use of planning and strategic meetings, having documented, consistent and transparent processes, and the ability to identify and manage key issues. It also includes processes to manage intervenors (e.g. determining standing and funding, managing scope, Information Requests and proceedings) and applicants (e.g. application guidelines, communication and proceedings).

Also captured by this section of the framework are the processes, tools and mechanisms used by a regulator in these interactions, and the degree to which those processes provide efficient and effective regulation.

## 3.4. Organizational Effectiveness Assessment Principles

To assess the organizational framework of the BCUC and specifically conduct a performance and operational review, we required assessment principles to identify and describe performance and operational challenges (and solutions) of the BCUC. KPMG performed a literature review to identify key effectiveness principles for both a not-for profit organization and also those specific to a regulator in developing these principles.

A regulator would be expected to have certain effectiveness principles unique to a regulator like Consistency and Predictability, but also apply principles to a typical service organization, such as Clarity of Mission and Strong Leadership and Governance. These principles, if operating effectively together, lead to overall operational effectiveness. These underlying principles include both efficiency and effectiveness principles over key regulatory and operational processes. Our literature review in Appendix D identified the following key principles of an effective regulator ("Key Effectiveness Principles") in Table 1:

**Table 1: Key Principles of an Effective Regulator**

Principle	Description
Clarity of Mandate and Scope and Strong Leadership and Governance	Clarity of mandate and scope, including what the regulator seeks to accomplish and why it is important should be communicated to and understood by all stakeholders. Strong leadership and corporate governance is required to carry out strategic initiatives and effectively perform on the principles below to successfully achieve its mandate.
Communication	Good communication allows stakeholders to understand the rationale for decisions and, further, can inform them of policy objectives and requirements. This can then lead to effective self-regulation. Communication should be “relevant and comprehensive”, “accessible”, “timely”, and “inclusive”. It is key to supporting most of the other principles noted below.
Consultation	Effective and early consultation among regulators, utility customers, key stakeholders and those with unique standing (such as First Nations) is an essential strategy for ensuring an appropriate regulatory framework. Consultation helps regulators understand the implications of their actions and to understand and identify all potential alternatives. Consultation also promotes trust and helps to avoid adversarial relationships.  It is important that the regulator engage and seek stakeholders’ input in designing programs.
Consistency	Consistency captures the idea that the treatment of regulated entities will be consistent across sectors and over time.
Predictability	Utilities may better plan for the future when they have confidence in the regulators’ processes and the applicants’ requirements. Key mechanisms for improving confidence are the establishment of well-defined and clear processes and timelines for review.
Flexibility	Regulators must have knowledge of, and be open to alternative, regulatory approaches. They must be willing and able to change their regulatory approach when external environment changes make alternatives more appropriate for stakeholders and the Commission than existing practice.
Independence	The concept of independence addresses the ability of a regulator to act independently from undue influences that could compromise regulatory outcomes. This links independence to transparency.
Strong Practices, Policies, Procedures, Controls and Strategic Planning	Strong and documented practices, policies and procedures and controls should be in three functional areas: finance, governance and organizational operations and process development. Effective external communication of these practices, policies and controls is also key. It is also important that these policies manage an active and informed governance structure and include an effective process of developing and executing strategic plans and initiatives.
Effectiveness and Efficiency	The assessment of regulation should consider cost effectiveness and consider the following six sub-considerations: <ul style="list-style-type: none"> <li>• Information Requirements. Regulators should collect only the information that is needed for them to carry out their role.</li> <li>• Time Taken to Make Decisions. Process should be well-defined and structured to eliminate unnecessary delays.</li> </ul>

	<ul style="list-style-type: none"> <li>• Staff with appropriate levels of technical knowledge. The regulator requires sufficient technical knowledge so that informed decisions can be made. Without trained staff, a regulator will be dominated by the utilities that it regulates; it will also tend to ask for more information than might otherwise be required to compensate, leading to inefficiencies.</li> <li>• Processes. These should minimize waste and duplication and operate quickly and easily for all parties.</li> <li>• Risk taking. Take risks, where appropriate, to perform and support their mission efficiently and effectively rather than continue outdated policies.</li> <li>• Assessment. Track impact/performance against key measures/targets.</li> </ul>
Qualified, Skilled, Trained and Talented Board and Staff	<p>The key resource used to fulfil its mission is its Commissioners, directors and staff. The effectiveness of the regulator depends on employing appropriate numbers who are talented, adequately trained, and properly supported and compensated.</p> <p>This requires continuous learning programs that support evolving operations as new knowledge and requirements arise from stakeholders and government and from its own assessment and feedback processes.</p>
Ability to Mobilize Others	Ability to mobilize resources, including other businesses, consultants and government /government agencies is key to addressing problems and to bring about change.
Embracing Technology for Mission	The best mission based organizations embrace technology to achieve its mission.
Ethical, Accountable and Transparent	<p>Regulators must take responsibility for their actions, and should have clearly defined processes for ethical decision-making. In addition, there should be:</p> <ul style="list-style-type: none"> <li>• Effective appeal mechanisms.</li> <li>• Adherence to principles of natural justice and procedural fairness.</li> </ul> <p>Transparency encompasses openness with respect to objectives, processes, data and decisions. Transparency helps gain stakeholder's confidence in a regulator's decisions.</p>
Resources Empowered	Financially empowered to allow regulators to impact and succeed in their mission. It is key for the regulator be able to secure the resources it needs from Government (or through the regulated entities if a levy system is utilized) on a timely basis and this often requires strong leadership and communication lines.

The above principles are used to identify and describe operational performance effectiveness and efficiency challenges and also solutions.

## 4. KPMG Evaluation of BCUC's Processes and Performance Efficiency and Effectiveness

Our discussions, review and comparison of BCUC against leading practise is framed within the topic areas noted in each sub-section below. In conducting our performance and operational review of the BCUC below, we used the Key Principles of an Effective Regulator (See Section 3.4 for a full description of the Principles) to highlight BCUC effectiveness challenges and also in describing possible considerations for the Task Force.

### 4.1 Mandate and Scope

#### 4.1.1. Observation – Growth and Changes in BCUC Mandate and Scope

North American utility regulators focus primarily on economic regulation – namely balancing shareholder and consumer interests, and on setting “fair and equitable” rates for monopoly utilities that might otherwise abuse their pricing power. However, regulators are being asked to consider broader social and environmental concerns, and must work within government policy directives that may promote specific economic sectors or policy outcomes. The result is that the objectives for economic regulation may be similar, but the breadth of interested parties, the number of stakeholders and the amount of public interest in certain areas has increased the types of applications, the depth of review and the detail of participants’ interests in regulatory proceedings.

The BCUC has experienced significant growth in the scope of its mandate in certain areas, which is consistent with other peer jurisdictions. Most peer jurisdictions had areas of their mandate that were different from the functional services regulated by the BCUC. Even the Manitoba Public Utilities Board, which has a similar mandate to the BCUC, also regulates municipal water and sewer and propane utility and funeral homes. The Alberta Utilities Commission’s mandate is similar also, except that it regulates municipal utilities and water on a complaints basis.

Interviews performed and BCUC metrics (identified in Appendix B) over the last five years highlight the growth, complexity and expanded types of applications, new laws and other special directives from the Province. Increased levels of policy and legislation directives of the Province were described as a key reason for BCUC’s scope expansion.

Conversely, although overall levels of activity and scope have grown, the BCUC has had some reduction in scope and work-load as BC Hydro (“BCH”) rates have been set by the Province until April 2016, then capped for an additional three years. Also, significant BCH capital projects have been exempted from BCUC review.

Many peer jurisdictions had scope changes that stemmed from government directives (e.g. Smart grid), legislative changes, regulator restructuring, technological change has added scope and raised questions of jurisdiction (e.g. LNG, solar energy, renewable energy, greenhouse gas), environmental issues and increased public interest.

BCUC has struggled to effectively manage its scope and scope changes through strategic resource re-allocation, direction and the implementation of necessary efficiency and effectiveness improvements including initiatives like moving to a more risk-based, performance-based and self-regulation approaches, among others.

In an environment of growth and change in scope and mandate in certain areas and reduction in others, regulators like the BCUC generally would be expected to ensure their operations and resources adapt to those changes. Regulators would reasonably be expected to implement continual resource re-allocations and efficiency and effectiveness improvements and manage better through scope clarification or reduction mechanisms, whether through interactions with government (e.g. exemptions) or moving to more efficient regulatory processes (e.g. Streamlined Review Processes

“SRP” or Negotiated Settlement Processes “NSP”) or alternative regulatory models (e.g. more risk-based, performance-based and self-regulation). Although the BCUC has used NSP and adopted SRP, both of which were indeed pioneered by them, all mechanisms must be employed as the applicability of each has limitations and the changes to the regulatory landscape is both broad and complex.

**Evidence or indicators of issues of clarity regarding direction and growth in certain areas of BCUC’s mandate:**

- Number of special directives issued to the BCUC by the Province has increased over the last five year period from one in fiscal year 2010, to nine in fiscal year 2013 and six in fiscal year 2014 (Appendix B).
- Increases in the following areas in the last five years ending fiscal year 2014 were:
  - The number of applications, applications reviewed without a hearing or alternative process and those with a written hearing increased by 28%, 31% and 55 %, respectively (Appendix B).
  - The number of decisions, reasons and orders increased by 33% and 26%, respectively (Appendix B).
  - The number of information requests by staff to utilities increased from 1,190 in fiscal 2010 to 2,458 in fiscal 2013 (Appendix B).
  - The number of customer complaints about utilities addressed by the BCUC increased in the last 5 years by 340% to 762 (Appendix B).
- Recent Government initiatives that have impacted the scope of BCUC include such areas as Customer Choice programs to allow customers a choice on their gas provider, Clean Energy (*Clean Energy Act*), carbon footprint reduction, Mandatory Reliability Standards in compliance with a bi-lateral (Canada and USA) agreement on network reliability and the introduction of smart meter technology .
- Court rulings have also expanded the mandate of the Commission to fulfill the Crown’s obligations for First Nations Consultations and to assess the consultation of Crown corporation applicants.
- Further examples from the other regulators of additional topic areas, generating new and complex issues which the BCUC must also address in its decisions include the following:
  - Business Model Complexity: The utility business model is changing from a simple model based on increasing electricity or gas sales from an expanding long life asset base of traditional delivery infrastructure, to a more complex integrated energy service provider model serving diverse and evolving customer needs with information-enabled infrastructures.
  - Security Risks: New information and communications technologies increase security risks.
  - Customer Relationship Complexity: The customer relationship is evolving from simple relationship of pay—receive energy to one of increasing expectations of personal and interactive services, and influenced by customer experience from other service providers.
  - Infrastructure Investment Complexity: Investment decisions moving from simple and binary based on population growth to decisions which are risk-based investment in replacement technology and frequently requiring some form of social license in order to proceed.
  - Competitive energy markets introduce pricing risks that utilities must manage and control.
  - Energy efficiency introduces new challenges and opportunities and initiatives in demand side management.

- A drive to renewable technologies generally, requiring at times significant investment in new infrastructure.
- Deferral account requests and policy determinations

Summary of Key Underperforming Effectiveness Principles:

- Flexibility (i.e. not sufficiently flexible in applying alternative regulatory approaches); and
- Efficiency and Effectiveness (i.e. not implementing efficiency and effectiveness improvements into its regulatory and operating processes).

#### 4.1.2. Observation – Strain on BCUC Resources and Fiscal Restraint from the Province

The BCUC is not resource empowered and this currently impacts its ability to be effective in its role. The increased breadth of scope and public interest, along with new technical and market challenges, require regulators to consider ways to increase the depth and breadth of their in-house expertise. Regulators should be expected to know whether resources need to be re-allocated and also be better supported by technology to be efficient and effective.

There has been a strain on the quality, the mix and in certain respects, the quantity of human resources used at the BCUC to cope with its scope. Even though the BCUC is funded directly by a levy from the utilities, these matters are in part affected by the Province's imposed directives over allowable pay scales of Commissioners and professional staff and the short minimum terms of Commissioners.

The lower compensation levels of Commissioners and professional staff in comparison to market, short terms of commissioners, and high turnover rates impacts the level of potential specialized knowledge and skill at the BCUC.

It can be reasonably expected that BCUC's responsibilities will continue to increase with time. In particular the reintroduction of responsibility for rate-setting for BC Hydro will only add to the requirements asked of the BCUC. Even under current activity levels, steps have to be taken to reduce scope levels in certain areas, manage scope levels through increases in process and performance efficiency and effectiveness levels and added resource empowerment.

The strain on the BCUC has also increased by operating within the IT policies of the Province. There are limitations on the ability to invest in information technology owing to the need to invest only in systems that will be supported by the Province's Shared Services division.

#### **Evidence or indicators of increased strain on BCUC resources:**

- The operating expenditures of the BCUC have increased by 14% over the last 5 years (Appendix B). However, this level of increase does not appear to be sufficient to support the BCUC to process its regulatory workload. Furthermore, comparative analysis to other jurisdictions shows that on a total cost basis (or on a per regulated customer or a percentage regulated revenue basis), even with the above increase in costs, the Commission's operating costs are still low compared to other regulators, highlighting that operating costs may be insufficient to support needed efficiency and effectiveness measures. Relative total expenditure at BCUC was \$7.6 m in 2014, which was the second lowest total expenditure level across the jurisdictions noted (Appendix B). This suggests the BCUC is either underfunded or highly efficient.
- Expenditures exceeded budgeted levels in four out of five of those years and by 14% in fiscal year 2014. The operating budget of the BCUC has not been increased or changed over the last four years ended in fiscal year ending in 2014 (Appendix B). The BCUC has consistent revenue deferral accounts that it is required to recover through subsequent year levies.



- Growth in skill-set required to service new areas where in-house skill-sets may not exist is highlighted by number of third-party supplier contracts to assist the BCUC of 188 in 2014 compared to 78 in 2007.
- Number of applications rose from 197 in 2010 to 252 in 2014 or a 28% increase whereas the number of hearings for the large utilities ranged from 25 to 37 across the five years noted (Appendix B).
- Compensation levels have remained static for at least the five years reviewed, both for full time Commissioner at an average salary of \$113,500 and part time Commissioners at \$525 per day and the executive level staffing has remained unchanged at 1 (Appendix B). The rates of pay are and have been at the maximum of their allowed levels for each of the last five years and are not competitive currently (Appendix B).
- Average salary and benefits for staff has increased by 2% over the last five years to \$113,545 at the end of 2014 compared to \$111,298 in 2010 (Appendix B), which is less than inflation over the same period.
- Staff incentives, like the bonus plan, were cancelled at the end of 2014 by the Government policy (Appendix B).
- BCUC has made requests for significant IT Improvements without approval or funding being granted from the Province and developments in general over the last 5 years have been limited to assisting the internal Human Resource and Finance department and its related software system improvements.
- Relative numbers of BCUC Full Time Employees (FTE) was 38 (including executive and directors) in 2014, which was the second lowest staff level number across the jurisdictions noted (Appendix B).
- Regulatory expenditure per capita of population was \$1.20 per person in BC compared to an average of \$3.70 per person across the jurisdictions noted (Appendix B).

Summary of Key Underperforming Effectiveness Principles:

- Flexibility i.e. not sufficiently flexible in applying alternative regulatory and adapting strategic approaches;
- Efficiency and Effectiveness i.e. not implementing efficiency and effectiveness improvements into its regulatory and operating processes;
- Resource Empowerment i.e. not addressing its resource constraints; and
- Ability to Mobilize Others i.e. interactions with Government not being effective in addressing its scope and resourcing issues.

#### 4.1.3. Observation – BCUC Response to Growth in Mandate and Scope

The BCUC's growth in mandate, changes in scope requirements and related issues and resources challenges to cope noted in section 4.1.1 has been consistent across the North American jurisdictions reviewed. Our observations from those other jurisdictions has been that clear strategies have been articulated to staff and most proactively review the growing issues and how to respond to those changing regulatory dynamics. We discuss further the strategy and leadership in section 4.3 below. However the steps undertaken by BCUC appear to be reactive to their changing environment.

Despite BCUC efforts to address its growth and changes in its mandate and scope it is evident that its resources (e.g. Human Resources and Information Technology and support resources) are constrained in part due to fiscal and operational constraints imposed by Government. This resource constraint exists despite the fact that in some areas its work load has decreased, notably in the area of rate regulation of BC Hydro, the largest utility in the province. However, there does appear to be challenges in BCUC's effectiveness in managing within the government constraints, while also responding to the evolution of its scope and mandate.

### **Evidence of BCUC Response to Growth in Mandate and Scope:**

BCUC has initiated some mitigating actions to address scope increases and changes, some of which include:

- BCUC implemented an organizational restructuring in 2012
- Increased staffing resources from 28 FTE in 2010 to 38 FTE in 2014 (increase of 36%) (Appendix B).
- Incurred increased costs in the last 5 years for expanded levels of part-time Commissioners, consultants and intervenors. Total BCUC costs rose from \$6.7m in 2010 to \$7.6m in 2014, an increase of 14% (Appendix B).
- BCUC now includes a compliance group which started in 2012, which tracks information and action items from Orders and Decisions;
- Sought exemptions from the Act for utilities and applications where regulation was not appropriate.

### **Leading practices and findings from other jurisdictions:**

Interviews highlighted that many peer group jurisdictions are proactive in addressing changes in their mandate or scope, including seeking exemptions and regulations through government interaction and consultation with stakeholders, addressing each change as they arise and constantly looking for solutions to efficiency and effectiveness challenges. Our research found the following examples of leading regulatory practice:

- BCUC has used performance-based regulation (PBR), but on a reactive basis driven by the application received by the utility. Other jurisdictions appear to be embracing this approach and applying it more pro-actively. Examples in other jurisdictions adopting of a more strategic approach to the changing regulatory environment such as being flexible and using a more risk-based and performance-based regulation “PBR” approach can be seen particularly in Alberta and Ontario.
- When adequate competition develops, the WSUC and OPUC reduce or limit regulation in the areas of competition.
- The OEB also initiated the development of a risk-based approach for the assessment of compliance by retailers and marketers. Over the planning period the Board also plans to extend its risk-based approach to the assessment of compliance by electricity and natural gas distributors. This approach reflects an assessment of the areas that present the least potential for non-compliance and for harm to consumers and, thereby, enable the Board to focus its resources in other ways that best serves the interests of consumers. OEB in Ontario, for example, may avail itself of a statutory power to forbear from regulating where it finds that competition is or will be sufficient to protect the public interest.
- AUC in Alberta, for example, is changing the way distribution utility rates are set in Alberta to make companies more efficient and keep utility costs lower for Albertans. Performance-based regulation is a method of calculating and setting utility rates using a formula that adjusts utility rate changes to inflation minus an enhanced efficiency or industry productivity factor. Except in limited circumstances, rates can only rise at changes less than inflation. A properly designed PBR system provides incentives to companies to operate more efficiently.
- WSUC acknowledged that regulatory trends are towards more efficient processes like risk-based, performance-based rate-making and away from cost-based models. WSUC indicated that the hurdles to PBR are (1) intervenors being attached to traditional rate-making models and (2) costs of technical experts needed in-house to evaluate utilities.
- Discussions regarding investments in information technology and human resources in other jurisdictions indicate other regulators are less constrained by the requirements to fit within the

boundaries imposed by other public sector bodies. Alberta regulates certain areas only on a complaints basis (municipal electrical utilities and water). WSUC also indicates that regulation is focusing more on service quality than prices and is more compliance based.

- Manitoba has elected to operate with few staff and instead rely on external advisors for most of the work undertaken. This approach tends to outsource much of the regulatory skill-sets required.
- The NEB has responded to its increase in scope from public interest by using more technology in hearings, increasing electronic communications, adding restrictions on standing and is currently looking at goal-oriented regulation as examples of being proactive.
- The AUC has a policy to pay current market competitive salaries and as a result they believe they are able to attract qualified staff.
- Other jurisdictions that are not currently able to offer competitive market salaries, focus on other benefits for staff that respond to work/life balance desires. For example, the NEB and AUC focus on offering banked overtime and flex hours and at the NSUARB, supervisors regularly meet with staff to discuss satisfaction and career path.
- Both the OEB and NSUARB have pay for performance for Board members and staff (e.g. the NSUARB Board members get rewarded for the efficient management of hearings and for releasing timely decisions and on the basis of other metrics). At the OEB, unionized staff receive performance compensation tied to organizational metrics and each functional group has objectives based upon the business plan which is published.

### **Considerations for Task Force**

- Consider an overall strategic review of existing scope and directionally ensure the regulatory approach is a more principles-based regulatory oversight model. This strategic review may include a review of “low risk” or “low value-add” regulatory processes to identify those which may be stopped or managed more effectively.
- Consider a more “risk-based” approach to regulatory oversight to avoid the current “substantive” approach from the BCUC. This review should also review the resources currently utilized and recommend where investments in either the quality or quantity of resource needs to be implemented. BCUC should be able to prioritize regulatory resources on risk areas with greater discretion on strategies to achieve a set of targeted broader-based objectives.
- As an example of a more risk-based approach, the Energy Supply Group undertakes regular, periodic and routine transactions. There’s an inability per BCUC staff, to challenge the current procedures due to legislation (Section 71 of the *Utilities Commission Act*). Flexibility in that legislation to give BCUC latitude of action might be appropriate. There is potential for the BCUC to review routine energy supply contracts and routine applications for regular quarterly rate changes on a ‘sample’ basis rather than to work on each application received. Alternatives for assurance of regulated energy rates used in other jurisdictions are also worth consideration.
- Government policies, and in particular its fiscal constraints, are hampering the BCUC from addressing issues related to its scope and mandate. Roles, responsibilities, financial constraints and government approvals and Corporate Governance requirements should be agreed between the BCUC and the Province. As examples, staff salaries appear insufficient for the current scope of its mandate and existing levels of compensation and terms of Commissioners are not sufficiently competitive to attract and retain qualified candidates.
- Information technology and tools at the BCUC has not been replaced with more effective data management systems due to Government constraints.
- Opportunities to improve performance include enhancing the strength, skillsets and engagement of resources at all levels. This includes identifying specific areas where capabilities of the BCUC have lagged behind the types of issues which are become more important in proceedings. Furthermore, increasing strength in these areas would make the BCUC more effective in guiding applicants and describing expectations to make the procedures more efficient and effective for all parties. Such capabilities relate to emerging technologies, environmental issues, legal issues,

economic development impacts, and aboriginal relations. There are also opportunities to improve consistency of proceeding project management and decision writing.

- The first priority for the BCUC should be refocusing its scope and mandate, developing a strategy to meet these goals and implementation of improvements in both tools and processes. Only then should there be consideration to either increasing its resources or indeed pursuing further efficiencies in its operation.

## 4.2. Legislation and interaction with Government:

### 4.2.1. Observation – Operational Interaction with the Province is Restrictive

Interactions with the Province include special directives, submissions made during regulatory proceedings and inquiries, informal communication and direction given through legislation. Timely interaction with the Province is generally required to ensure BCUC's financial and operational needs are understood and that decisions and related actions are taken, when required, so as to not hamper its ongoing operations. Although the Province does not finance the BCUC directly, legislation does impact resources and operations in areas of compensation levels and terms of Commissioners for example and the use of Province shared services impacts its Information Technology options and strategies.

Interaction on BCUC operational issues and needs with the Province appears, at times to be muddled, reactionary and slow.

#### **Evidence of restrictive operational interactions with the BC Province:**

- The BCUC requested an IT upgrade in 2009, and no approval nor funding was provided. These IT needs still exist and are essentially re-recommended in the Information Technology section below.
- Minor renovations at BCUC offices were halted and delayed awaiting Government approvals.
- Hiring an Executive Director was not made a priority due to the fiscal pay range restraints imposed on the BCUC.
- Terms of Commissioners and compensation levels are not market competitive and lack incentive programs such as ability to pay bonuses or other performance incentives to attract and retain staff and Commissioners. Full time Commissioner with an average salary \$113,500 and part time Commissioners' daily rate of \$525 per day have not changed for the last five years (Appendix B).
- Reporting to the Province for example does not include performance metrics that would highlight financial and operational needs or issues and currently there is no significant reporting of this nature. Currently only an Annual Report is filed with the Province.

### 4.2.2. Observation – Regulatory Interaction with the Province

The legal constraints on the BCUC are predominantly through the *Utilities Commission Act* ("UCA"), and the *Clean Energy Act* which influences its decisions. Interaction with the Province under the UCA, the *Clean Energy Act* and other Directives issued on regulatory issues appears to be inconsistent and occasionally unclear and slow.

The regulatory interaction with the Province does not have standardized processes for continuous update on policy developments. The need for clear direction from the Province on policy should be proactive rather than reactive in order to bring consistency and efficiency of policy direction to the BCUC from the Province. The mechanisms that allow the Province to issue guidelines and direction outside of legislation to both the BCUC and the utilities do not appear to be documented in policy or procedure. More importantly, having some foresight of policy matters which are likely to change, can

influence how proceedings are managed, even if such informal matters cannot be fully reflected in decisions until the changes to policy are proclaimed.

Either the Provincial minister responsible for the Commission or the Commission itself, with Cabinet approval may issue exemptions to utilities which otherwise come under the *Utilities Commission Act*. However, the extensive timeline to complete exemption requests is felt too often to prohibit both the applicant and also the Commission itself from seeking exemptions.

There is also a current practice of Utilities seeking guidance from the Province directly in matters in any area that is new or contentious. BC Hydro and ICBC, being Province-owned utilities, have specific implications as Crown Corporations. For example, matters deemed relevant or in-scope of a hearing can have policy implications e.g. environmental impacts of capital expenditure activity or smart-meter installation issues. However, it would appear that the Crown Corporations and the private sector utilities act no differently in their ability to seeking input, assistance and direction from the Province in matters on which the BCUC must adjudicate.

#### **Evidence of inconsistent regulatory interaction with the Province and BCUC:**

- The case examples include applications which were subject to recently implemented or changing Provincial policy. This includes topics such as the role of independent power producers, the *Clean Energy Act* and Liquefied Natural Gas development. The case reviews highlighted instances where the BCUC was uncertain on government policy or unsure as to how to appropriately consider these matters in its decision making process. For example, the cases included letters from government staff members on an application, but the BCUC was unsure of the standing of that individual or whether that view constituted definitive government policy.
- The case examples also highlighted an instance where government policy was changed in the middle of an application. The impact resulted in delays in decisions and reconsideration decisions. This is particularly noteworthy when one of the key parties in the proceedings is a Crown Corporation and subject to guidance by its shareholder, the Province.
- Number of special directives issued to the BCUC from the Province has increased over the five year period from one in fiscal year 2010, to nine in fiscal year 2013 and six in fiscal year 2014 (Appendix B).
- The Province effectively acted as an intervenor in one case example.
- Policies and guidelines from the Province on thermal central heating districts has taken over six months to resolve.
- *Clean Energy Act* – An interview highlighted that it was not clearly understood as to how the BCUC was to interpret and prioritize the energy objectives set out in Section 2 of the Act

#### Summary of Key Underperforming Effectiveness Principles:

- Clarity in Mandate and Scope: the role, responsibility and process clarity needed in BCUC's ongoing interaction with the Province; and
- Consultation and Communication: the need for timely and effective communication with the Province and at times other stakeholders with respect to new regulation and policy.

### **Leading practices and findings from other jurisdictions:**

- The Nova Scotia Utility and Review Board, for example, operates with a relatively high level of independence from government when making investments in resources and technology.
- Through interaction with its government, the NEB requested and was able to have legislation altered to ensure a “Recognition of Standing’ for intervenors placed in the NEB Act in 2012, which improved the overall intervenor process for the NEB.
- With respect to guidance, from legislation or other documents, on interaction with government:
  - The Alberta Utilities Commission, with the recent Alberta Public Agencies Governance Act, have supporting documents that require agencies to have clearly articulated roles and responsibilities.
  - The *Alberta Electric Utilities Act* also gives the AUC objectives, which includes bringing efficiencies to both the utilities and the regulator. Under this broad objective the AUC operates with reasonable leeway to drive forward strategic efficiency initiatives, such as performance based regulation, into the utilities they regulate.
  - Other organizations surveyed feel that sufficient guidance is provided by their Acts and supporting documentation to allow for efficient and effective interaction. Some regulators feel that the room for discretion provided within guidance allows for flexibility, while others are concerned with the lack of transparency and associated negative impact on perceptions of independence from Government.
- With respect to government communication and collaboration related to new legislation:
  - Each regulator surveyed, including the BCUC, regularly collaborates with government on the development of new legislation, and is notified of most relevant legislation before it is enacted and immediately afterwards
  - When the Legislature is in session, the Washington Utilities and Transport Commission’s (WUTC) Policy Division devotes staff time to tracking legislation that affects the agency and regulated companies. The WUTC has a close working relationship with legislative staff, and is often called upon to provide technical assistance and policy analysis, in an informal capacity. The WUTC’s Legislation and Policy Director, policy staff, and the Chairman of the WUTC have been called upon to testify before legislative committees. Ideally, the commissioners are fully briefed on pending legislation that may affect the WUTC before it becomes law.
  - In Alberta, a public consultative process is often utilized when changes to policy and legislation are being considered. As appropriate, the AUC is engaged as a stakeholder and provides input. The AUC may be asked to inquire into a matter(s) and advise the Minister, cabinet or legislature. Typically the legislature directs the AUC to hold or conduct an inquiry through an Order-in Council with the AUC being responsible to report to the Minister of Energy on the results of the inquiry.
- With respect to other formal communication structures with government:
  - The Alberta Utilities Commission receives action requests (ARs), typically regulatory related ARs, from the government that are primarily responded to by the AUC’s communication group. For administrative, financial or governance matters, the corporate services or chief executive divisions respond e.g., annual ministry business plan financials and narrative, quarterly forecast updates, annual report, results based-budgeting exercises, etc. All forms of communication are typically reviewed with the chair and/or chief executive, or the Chair’s Management Committee, and the AUC governance committee.
- With respect to funding, reporting and oversight:
  - The Alberta Utilities Commission receives no government funding, its operations are funded through a general administration fee on Alberta’s utilities and on the independent system operator. Although the AUC’s finances are surplus neutral to the Government of

Alberta, the AUC is subject to the *Financial Administration Act* and complies with Treasury Board directives.

- Washington Utilities and Transportation Commission are required to submit budget requests to the Governor’s office, and then the Governor will review them for inclusion in his / her budget. The Governor’s office then submits its budget to the legislature, where it undergoes revisions in the House and Senate. The budget must be passed by both houses, and signed by the Governor before it goes into effect.
- The Alberta Utilities Commission is held accountable through the Ministry of Energy business plan and AUC business plan. The AUC, on an annual basis, publishes progress made towards achieving the goals set out in the Ministry and AUC business plans in the Ministry of Energy annual report, which includes the audited financial statements. The Ministry of Energy annual report is subject to review and discussion by the Committee of Public Accounts.

#### **Considerations for the Task Force:**

- The roles, responsibilities and interaction process between the BCUC and the Province need to be clearly described and agreed in ways that promote effective and efficient interactions. These guidelines should include updates on policy developments and how the BCUC can effectively fulfil its mandate subject to Government policies. These guidelines should also cover reporting requirements of the BCUC to the Province, as well as protocols of interaction, including when more urgent financial and operational, new policy guidance or assistance needs exist.
- Key Provincial liaisons such that BCUC executives feel empowered to raise and resolve issues under their own authority or with direct links to those who can resolve the issues as they arise.
- Identifying strategic government policy issues as they relate to the BCUC, and resolving these prior to related applications.
- The process of obtaining exemptions under the *Utilities Commission Act* needs to be reviewed and if possible, acceleration of review and issuance provisions, if supported, be implemented.
- The BCUC needs to be proactive and be empowered to request timely assistance in understanding new laws, regulation and government directives. This should include requests for policies or guidelines on new or developing issues or technology from the Province. Clarity of policies or guidelines may require the Government to be active in scoping issues e.g. in pre-policy planning workshops covering new or emerging areas and where potential utility or policy exemptions may be appropriate.

## **4.3. Strategy and Governance**

### **4.3.1. Observation – Strategic Direction and Leadership:**

The historical structure of the BCUC had two executive officers 7 years ago, including a both a CEO/Chair and also an Executive Director (“ED”). The Chair at that time was involved in all hearings. The role of the ED was to oversee strategic initiatives and operations, making executive decisions and was a link between the Commissioners and the directors and other lead staff.

Since 2007, leadership of BCUC has vested in only one individual, being the current CEO/Chair. Currently, all directors and Commissioners report to the CEO/Chair. Under this structure, the CEO and Chair’s time and expertise is split between Commissioner leadership activities (i.e. undertaking key hearings and running the day-to-day operations of the BCUC). Our interview responses suggested an Executive Director hiring could not be pursued due to existing financial resource constraints.

Under this flat operational structure, with only one ultimate decision-maker, all staff, directors and Commissioners compete to get their ideas heard and implemented through the CEO/Chair. While it is acknowledged that the BCUC is a relatively small organization, this single leadership interaction impacts the organizational culture by creating a 'bottle-neck' impacting efficient management decisions.

Strategy for the BCUC is set annually and initiatives are documented. However, there is little evidence of strategic reporting, follow up, priority or accountability to get these strategic aims implemented. As a result, they are not being completed. These strategic initiatives were in many cases aimed to improve efficiency and effectiveness of processes. Stretched resources in the BCUC were indicated as partly to blame for this inaction, but there appeared to be a lack of leadership and follow-up as these initiatives, although recognized to be important, are not progressed to conclusion.

It was felt internally that the 2012 BCUC reorganization was announced and implemented with little consultation with staff, as to roles and accountabilities under the new structure, and the impact on the BCUC. It was commented that staff resources did not fully move with responsibilities and as a result, there ought to be a further re-alignment of resources at this time. Staff are looking for more change management leadership in any future implemented reorganizations or changes from the Government's current core review of the BCUC.

#### **Evidence of strategy implementation and leadership issues:**

- A 2014 strategic initiatives document and the Vision, Mission, Values, and Objectives document dated January 21, 2013 (also containing strategic initiatives), from the BCUC were reviewed and discussed with staff. The initiatives are assigned to departments and not individuals. Many of the initiatives were dated and were not being completed in timelines set out without evidence of accountability, nor was there any evidence of regular reporting of these initiatives or reporting against set strategic metrics or these initiatives. Many of these strategic initiatives were proposed to improve the efficiency and effectiveness of the BCUC.
- The executive level staffing has remained at 1 over the last five years and was not increased to help implement these strategies (Appendix B).
- The operating expenditures of the BCUC have increased by 14% over the last 5 years (Appendix B). However, the expenditures have not been sufficient to implement needed efficiency and strategies proposed.
- Expenditures exceeded budgeted levels in four out of five of those years and by 14% in fiscal year 2014. The operating budget of the BCUC has not been increased or changed over the last four years ended in fiscal year ending in 2014. The BCUC has consistent revenue deferral accounts that it is required to recover through subsequent year levies (Appendix B).
- Prior to Management preparing the metrics requested for this Core Review project (included as Appendix B), there were no real metrics developed or tracked to drive strategic direction or measure success of BCUC. Examples of metrics used included operating costs as a percentage of regulated customer and regulated revenue.

Summary of Key Underperforming Effectiveness Principles:

- Leadership and Governance as the Key Effectiveness Principle that are underperforming at the BCUC.

#### **Leading practices and findings from other jurisdictions:**

- Almost all other regulatory jurisdictions had a dual role of leadership covering regulatory aspects and separately operational aspects of performance of the regulatory organization (Appendix B).



- Strategy documentation, business plans and progress against those plans was evident in certain jurisdictions and published. For example the OEB publishes a rolling three year business plan with progress made against a balanced scorecard of objectives, which is reported up through the COO and the CEO.
- Although it was common for other peer jurisdictions to struggle in identify key metrics, many had those metrics and data available from their reporting systems that they used to manage the organization and provided to us.
- Some peer jurisdictions report their key metrics and annual strategic initiatives to the public in various forms and some also have the performance results verified by third parties.
- The NEB has reporting of standardized metrics to government, legislated performance targets, and internal performance reporting processes.

#### **Considerations for the Task Force**

- Expansion of the executive leadership to assist both in overseeing regulatory responsibilities but also executive operations and decision making at the BCUC.
- Expanded leadership would be consistent with other peer jurisdictional models and would likely improve the ability to support the scope, and improve the organization’s accountability and operating culture.
- Future significant organizational changes at the BCUC should be appropriately managed so staff fully understand the reasons for the change, the extent of change and how they will be affected. Organizational change management should enable staff to understand both challenges and benefits and how they can support the organization through this transition and voice their opinions and views.
- BCUC leadership, with the input of directors, needs to develop suitable metrics to monitor its performance, identify issues and resource needs, generally manage the operations of the BCUC and communicate its financial and operations needs to the Province.
- BCUC metrics in Appendix B might be used as a starting point to monitor operations. Since most of this data was not readily available from the current BCUC’s reporting system, process changes will need to be developed and implemented to generate this information as applications progress. Considerations should be given to assessing results on a quarterly basis and presenting this or extracts of these performance results on the BCUC website for accountability and transparency and also compare results with its peers.

#### **4.3.2. Observation – Corporate Governance**

Governance refers to the framework of rules and practices, rights and duties that directs and controls an organization and by which the governing body, often a board of directors, ensures accountability, fairness and transparency in the organization’s relationship with all of its stakeholders: Government, regulated entities and their customers, public, management and employees.

The expectation of most organizations is that the corporate governance framework should be documented and cover such things as the distribution of rights and responsibilities of those within the organization, and the interaction and relationship between the organization, shareholder (or in the case of a regulator the Government ministry) and external stakeholders and covers topics such as the distribution of responsibilities, authority, rights, conflict of interest, independence, power and supervision and control.

#### **Evidence of corporate governance issues:**

- The BCUC operates as an independent regulatory agency within the Province. However, the setting of strategy, the measurement and documentation of performance, and reporting of operations against that strategy did not appear to be documented or detailed publically, with the exception of the Annual Report.
- The BCUC only submits its Annual Report to the Lieutenant Governor in Counsel
- The Commission's Service Plan, in accordance with the *Budget Transparency and Accountability Act*, is no longer submitted to the Province. The operating and performance metrics reported to the Province in the Annual Report are not sufficient to support dialogue of performance and requirements between the Province and the BCUC, as an example related to the resourcing challenges faced by the BCUC.
- The BCUC executive level staffing remains at 1 individual (Appendix B).

#### Summary of Key Underperforming Effectiveness Principles:

- Leadership and Corporate Governance; and
- Accountability and Transparency: i.e. the setting of strategy, the measurement of performance and reporting of operations against that strategy, did not appear to be documented or detailed publically

#### **Leading practices and findings from other jurisdictions:**

- Peer group jurisdictions in many cases had more and at times extensive corporate governance documentation and performance metrics that were publically available. The NEB, for example, issues an annual service standards report that outlines performance of departments against key and agreed-to metrics.
- Examples of corporate governance and strategic review documentation were also noted at the OEB and the Public Utilities Commission of Oregon. The PUCO, for example includes publically available disclosure over 21 separate Key Performance Indicators (KPI) such as average price of electricity for residential users as a percentage of the national average, admin costs as a percentage of revenue, and 3 year rolling average of megawatts acquired through Energy Trust programs. For each metric there is disclosed an 'owner' and contact details of that person.

#### **Considerations for the Task Force**

- The BCUC should review publically available corporate governance of peer group jurisdictions to understand what others have in place. From this analysis, the BCUC should develop and document its own governance documents starting from the best examples such as the OEB and monitor their compliance.
- BCUC leadership to split roles between operations of the Commission and regulatory proceedings and decisions required of the Commission.
- Establish formal reporting of agreed performance metrics (internal and external) and progress on a periodic basis against those performance goals.

#### **4.3.3. Observation – Tone at the Top**

BCUC professional staff and Commissioners appeared to enjoy their jobs, including staff interaction, and overall viewed their collective staff team to be professional and hard-working. This culture enables challenging responsibilities to be met and workloads to be tackled. There were comments however, that staff felt unsupported in initiatives to improve the organization. The day-to-day

workload was heavy, overtime and weekend working was stated as being undertaken regularly. As staff dealt with day-to-day work responsibilities, the strategic initiatives to improve efficiency and effectiveness were not followed through as a result.

Aligned with this were comments that the BCUC is somewhat resistant to change from historical practices. BCUC does not appear to have a culture that fully accepts and embraces change nor strategically implements formalized and standardized processes. All functions felt they were too busy to deal with any change, including improvement initiatives.

#### **Leading practices and findings from other jurisdictions**

- Discussions with the other jurisdictions emphasized that any significant strategic change needed to be driven from the leadership in place. At the AUC, for example, the move towards a more strategic and efficient outlook for the regulator came from the Chair and the recruitment of Commissioners focused on market economic analysis within the regulatory environment.

Summary of Key Underperforming Key Effectiveness Principles:

- Leadership and Corporate Governance

#### **Considerations for the Task Force**

- The executive team should discuss the perception of the tone at the top with staff and discuss what changes, if any, may improve the work environment.
- Consideration of and ultimately implementing the recommendations in other sections of this report will refocus the organization on effectiveness and efficiency. These efficiency improvements and leading practice procedures will require a level of strategic leadership and change of culture at the BCUC.

## **4.4. Operating Model and Structure: Use of Commissioners**

### **4.4.1. Observation – Operating Model, Leadership and Commissioners**

As noted earlier, leadership of BCUC has vested in only one individual, being the current CEO/Chair. As such, the CEO/Chair's time and expertise is split between advice and guidance for the Commissioners and running the day-to-day operations of the BCUC. Other peer jurisdictions have an expanded executive team, with varying combinations of boards of directors, executive directors and vice-chair positions. This matter was further discussed above under Strategic Direction and Leadership.

The BCUC has only one full time Commissioner that being the CEO/Chair and continues to use a high proportion of part-time Commissioners on all regulatory procedures. Lead staff, based upon their experience, found that full-time Commissioners provide greater flexibility and simpler interactions with staff. Furthermore, the large number of part-time Commissioners at the BCUC (ten) were felt by Lead staff to be a cause of inconsistency in processes and ultimately in hearing delays owing to the part-time nature of their available time. Other peer jurisdictions all have a higher proportion of full-time Commissioners in their operating model and certain other jurisdictions have more Commissioners with direct operating experience in the types of organizations being regulated.

### **Evidence of operating model leadership issues and findings from other jurisdictions**

- Since 2007, the executive level staffing has remained at 1 individual (Appendix B). Almost all other regulatory jurisdictions had a dual role of leadership covering regulatory aspects and separately operational aspects of the organization.
- BCUC has the largest number of part-time Commissioners used across the jurisdictions noted.
- Full-time Commissioners has remained at 1 and part-time Commissioner has increased by 22% to 11 (Appendix B).
- The FTE level of Commissioners, currently at 5.5 FTEs, has not increased at the same rate as with the growth rates of Directors and regulatory staff over the last five years ending fiscal year 2014. The growth rates are 27%, 75% and 70% respectively. (Appendix B).
- The average number of years that Commissioners have been with the Commission has not increased significantly in the last five years to 5.10 years at the end of fiscal year 2014 (Appendix B).
- Interviewees from other jurisdictions indicated that full time Commissioners working in the same building as staff have been able to build strong working relationships.
- Only one other jurisdiction, Manitoba, had only one full time Commissioner.
- Most jurisdictions had similar interactions between staff, who provided information and Commissioners, who made decisions. Commissioners provided guidance to staff on focus and priority of inquiry. However, while not being a leading practise for BCUC to consider, the US based regulator in Oregon uses an operating model that has Administrative Law Judges (ALJ) between staff and the Commissioners. The ALJ arrive at initial proposed conclusions with the assistance of staff and propose a decision for the Commissioners to consider as part of their evidence. Commissioners had their own separate staff advisors that assisted them in making the final decision.

Summary of Key Underperforming Effectiveness Principles:

- Consistency: in regulatory process and decisions;
- Predictability: of processes and timing; and
- Efficiency and Effectiveness: of the regulatory process

### **Considerations for the Task Force**

- Expansion of the executive leadership to assist both overseeing regulatory responsibilities but also executive operations and decision making of the BCUC.
- BCUC should consider transitioning to more full-time Commissioners from part-time Commissioners to ease process inconsistencies and delays.
- The minimum and appointed terms of full-time and part-time commissioners should be increased to add experience and knowledge and reduce turnover rates.

## **4.5. Interaction with Stakeholders and Related Regulatory Processes**

### **4.5.1. Observation – The BCUC’s Public Advocacy Role**

The Province does not have a formal public advocacy body or department for consumers other than Consumer Protection B.C. (“CPBC”), but the CPBC does not participate in BCUC’s proceedings. Intervenor often represent special interest or sub-sections of special customer groups such as

industrial intervenors and old-age pensioners etc. As a result, BCUC Commissioners and staff take care to ensure that the interests of unrepresented groups (often the general public as a consumer) are appropriately considered in the regulatory hearing processes.

There are many interest groups who participate in regulatory proceedings. However, should the BCUC believe that certain interests are not adequately represented in a proceeding, staff may expand their role to act in an advocacy capacity for under-represented groups. This often takes the form of pressing for full information from applicants – usually through Information Requests and witness questioning.

In some situations, as an example the NSP, BCUC ‘ring-fences’ delegated staff who take on a consumer advocate role from other members of the regulatory team. Staff commented however, that in these situations where the BCUC takes on a definitive advocacy role, the proceedings can be tainted by the perception of lack of fairness by the applicant.

BCUC acknowledges that utilities’ sensitivities to staff’s perceived advocacy role has made staff consciously steer away from acting in a full or complete advocacy role. For example, staff indicated that they will not argue points, provide solutions or alternatives in the interests of the public in the hearing process generally. Commission staff instead will only make judgments on what information a public or consumer advocate would request and ensure that Commission’s Information Requests and witness questioning uncover this information for fulsome decision support. There is no formal documented guidance available for staff to apply in carrying out any advocacy activities. Without strategic guidance to staff in this area, the “zeal” with which this advocacy is undertaken will vary with the staff individuals involved in the particular case.

One of the most efficient process hearings is through a Negotiated Settlement Process (NSP), where the applicant, regulator and relevant parties negotiate a resolution of issues within an application. This process has the ability to speed up resolution of issues without time-consuming consultation through the BCUC. It was discussed that an effective and independent public advocate would help with applicant negotiations and the settlement of issues to bring efficiencies to the NSP outcomes.

#### **Evidence of public advocacy issues:**

- Negotiated Settlement Proceedings have reduced from 6 in 2010 to nil in the fiscal period ending in 2014. In part this reflects the reduction of the need for rate determination of BC Hydro pursuant to Government directive and the challenges of ensuring all customer sectors are appropriately represented in an NSP proceeding. (Appendix B).

Summary of Underperforming Key Effectiveness Principles:

- Consistency in regulatory process; and
- Independence

#### **Leading practices and findings from other jurisdictions:**

- Manitoba has a consumer association as a public advocate separate from the regulator. This is funded through public legal counsel.
- Oregon has a Citizen’s Utility Board that acts as a consumer advocate in regulatory hearings. Also, at the OPUC, most staff operate in a public advocacy role and propose solutions and vent those solutions with all advocacy groups and interested parties. All information is then reviewed by Administrative Law Judges.

- Our peer group review showed that most other jurisdictions have a formal department or separate public advocacy body to act on the consumers' behalf and view this model to be effective. For example:
  - In Washington, Public Counsel division of the Attorney General's Office is an important advocate for residential and small business customers of regulated electric, natural gas, and telecommunications utilities. Public Counsel represents the interests of ratepayers in rate case proceedings and other policy matters.
  - Public advocate bodies are managed separately from the regulatory body – often within the Attorney General's department.

### Considerations for the Task Force

- The need for a formal public advocacy body in British Columbia, that is independent of the Commission, should be considered. The roles, responsibilities, funding and Governance of a public advocate, including the ability to negotiate positions on behalf of the general consumer should be documented.
- Appropriate consultation with stakeholders would be required to achieve implementation success. Effectiveness and perception of fairness would improve with a separate public advocacy team. Roles should be formalized and consultation should be sought on public advocacy structure from stakeholders. Issues to discuss would need to include nature of funding for this advocacy group.
- Internal and publically available external process documentation would be required to support this new public advocate body.
- Best practice participation and policy documents should be on the BCUC website in plain English to support all advocacy groups. Consideration should be given to add instructional videos to support public advocates in their interactions.
- Absent this change, guidelines for managing the process for the public interest and situations for the BCUC taking on a public advocacy role continuing should be drafted in consultation with utilities.

#### 4.5.2. Observation – Intervenor Interactions

The interaction between BCUC and intervenors is detailed in Appendix A. The special interests of intervenors may not always be in scope of the issues in the application, and comments from Commissioners included that the 'pendulum' for intervenor interests has, perhaps, swung too far away from the utility and towards intervenor interests.

Out-of-scope intervenor interactions in hearings is a common issue both at the BCUC and other peer jurisdictions. In some proceedings out-of-scope matters have been raised by those that have questionable standing. Other jurisdictions like the NEB for example, have requested changes in *The National Energy Board Act* to define an intervenors' 'Recognition of Standing' to ensure only those 'directly affected or having relevant information or expertise' are allowed to participate in a hearing. Although this is the first criteria by which a party can gain access to a proceeding, it does not assure that no out-of scope issues will be raised by those that do have standing.

Generally, intervenors have a right to participate. However, the common issue is that they have both in-scope and out-of-scope issues. BCUC professional staff and Commissioners need training and improved and formalized processes and strategies to reduce time spent on out-of-focus intervenor issues in the hearing process. Active management of out-of-scope matters is important and requires careful attention by staff and Commissioners to ensure that the proceeding and the subsequent decision are not challenged.

### **Evidence of intervenor issues:**

- Average costs granted for intervenors in BCUC hearings over the last five years was \$1.5 million, with a high of \$2.1 million in 2013 (Appendix B).
- The number of information requests by intervenors to utilities increased from 2,112 in fiscal 2010 to 2,976 in fiscal 2013 (Appendix B).

### Summary of Key Underperforming Effectiveness Principles:

- Efficiency and Effectiveness: when and how intervenor participate or are communicated with;
- Consultation: with intervenors earlier in the hearing process and government to bring about change in this area were lacking; and
- Strong Procedures, Policies, Procedures and Controls: lack of documented guidelines over intervenor interaction.

### **Leading practices and findings from other jurisdictions:**

- 'Recognition of Standing' for intervenors was outlined in changes to the *NEB Act* in 2012. By contrast participation and cost award guidelines for the BCUC were last updated in 2007. Section 55.2 of the *NEB Act* now has the following requirements for standing:
  - *On an application for a certificate, the Board shall consider the representations of any person who, in the Board's opinions directly affected by the granting or refusing of the application, and it may consider the representations of any person who, in its opinion, has relevant information or expertise. A decision of the Board as to whether it will consider the representations of any person is conclusive.*

The NEB indicated that it often elects to have a written hearing process when a large number of intervenors are expected to add to process efficiency.

- OEB is reviewing its intervenor processes and has made small changes to limit who can participate, regular intervenors are required to file annual reports on who they represent and the OEB publishes intervenor costs on its website.
- The AUC indicated that it believes its intervenor standing rules are clear and are even more specific for certain applications. As an example, only those within a certain distance of a project are deemed affected and the AUC apply the rules firmly to groups that fall outside this criteria.

### **Considerations for the Task Force**

- A consistent and rigorous intervenor screening process should be considered, with updated 'Recognition of Standing' criteria applied. This may require Government legislation or directives to achieve.
- This intervenor screening process and guidelines would have to be documented and visible to all intervenors, must be applied at the time of intervenor registration, and must involve Commissioners who have the authority to deny participation.
- There is a need for stronger funding assessment processes for those intervenors viewed as eligible to participate. This should avoid funding matters only being assessed by Commissioners at the end of the hearing process.
- Stronger hearing process guidelines and protocols may be required to keep intervenors on-point and this direction should come from the Commissioners. New guidelines would be needed so intervenors are aware of changes above, if implemented.

- Intervenor participation processes need to be improved, documented and supported through the training of Commissioners and professional staff on techniques to keep intervenor involvement on scope, including (1) communication of the expected scope, for example, through a standard “issue summary identification” process with the applicant and stakeholders pre-application and/or early in the application process (2) Commissioner panel, rather than staff, should formally respond to all initial funding requests at the application stage as an opportunity to highlight the out of scope issues with intervenors in addition to stating that they will not be funded.
- The utility applicant has the ability to not answer intervenor questions should they believe the questions posed are out of scope from the application. Professional Staff though, as a policy, should review intervenor funding requests and seek feedback from the applicant on intervenor Information Requests. This should identify out of scope information and related issues being pursued by intervenors and communicate concerns to intervenors to keep hearing time and costs for all involved to a minimum.
- Intervenor process guidelines need to be strategically documented with the goal of encouraging efficient and effective participation. Training sessions, Q&A documents and video examples should be considered to supplement intervenors understanding of best practice participation.

#### 4.5.3. Observation - Staff Information Requests

BCUC Information requests are growing significantly on applications. Interviews with BCUC staff highlighted that some of these information requests are not subject to materiality or relevance reviews and are issued without adequate strategic oversight, planning, training and monitoring controls such as pre-issuance review by lead staff.

Inappropriate information requests can and do significantly increase the costs and time of hearings and are a source of contention and regulatory burden on participants.

##### **Evidence of staff information request issues:**

- The nature of what an information request is can vary depending on whether one question has numerous sub-parts. However, from the BCUC’s records, Information Requests issued by Commission staff to utilities has increased from 1,190 in fiscal year ending 2010 to 2,458 in 2013, an increase of 107%. During that same period, intervenor information requests have increased from 2,112 to 2,976, an increase of 41%. These overall increases have occurred despite the BCUC’s reduction in scope and work-load as BC Hydro (“BCH”) rates have been set by the Province until April 2016, then capped for an additional three years. Also, significant BCH capital projects have been exempted from BCUC review.
- Case examples illustrated specific situations where BCUC established processes were ineffective related to information requests that contributed to difficulties with the application. One such example highlighted a lack of formal and effective process for establishing the key issues on the case, which was felt to lead to information requests without narrow focus, and drafting of information requests without review by lead staff prior to them being sent out.

Summary of Key Underperforming Effectiveness Principles:

- Efficiency and Effectiveness: how these IRs can increase hearing time; and
- Strong Procedures, Policies, Procedures and Controls: lack of IR processes and related controls.

##### **Leading practices and findings from other jurisdictions:**

- Other jurisdictions have processes over the quality and relevancy of information requests and consider both risk and materiality when issuing information requests.



### Considerations for the Task Force

- BCUC led Information Requests should be part of the hearing planning process. The basic goal and information needs of IR's should be evident and discussed and agreed upon by Lead staff and the Commissioners at the planning stages of the application and as required during the hearing process.
- All IRs drafted by staff, should be reviewed and signed off by Lead Staff prior to their issuance and should be subject to strategic processes to ensure they are both material, with a reference to materiality boundaries agreed as part of the planning process, and relevant to the application's issues. Consideration should be expanding the involvement of Commissioners in the review of IRs before they are issued.
- Commissioners, Lead staff and staff require additional training to issue effective IRs.

#### 4.5.4. Observation – Interaction with Applicants and Quality of Utility Applications

##### Interactions with Applicants:

Interviews highlighted that interactions with applicants were not part of formalized processes and requirements in all cases. Communications between BCUC and utilities could be expanded and include earlier interaction for Commissioners, as well as staff. Case studies indicated there is the lack of a process for effectively engaging Commissioners early in the application process.

We would expect open, both informal and formal, interaction with applicants may need to be expanded to improve the efficiency and effectiveness of hearing processes and to make the needs of the BCUC more transparent to stakeholders. Specific interactions with applicants may include informal communication and guidance given prior to applications, pre-meetings, procedural conferences and training sessions, applications, interactions through submissions and hearings and post hearing feedback meetings.

##### Quality of Applications:

Consideration of an application is formally initiated when the applicant files such an application with the Commission Secretary. Most jurisdictions are moving application documents away from paper based filing to electronic filing offerings, like the BCUC, where almost all BCUC applications to the BCUC are now filed by email, with paper copies provided for file record. Once the application is filed it becomes a public document and may be viewed by the general public. BCUC can only make judgements on evidence provided to them.

Applications received from utilities cover a wide number of issues, topics, timelines and themes. There is a range of information included within each application and there is a variety of quality from the utilities in those applications. It is generally accepted that utilities have more information on their cost structure than the regulator. Depending on the issue being considered, the utility may not have an incentive to disclose this information.

Lead staff may currently have pre-application discussions with applicants. However, there is a lack of application pre-screening activity undertaken by the BCUC on the applications received. At present there is no checklist of minimum quantity, quality or format of information to be filed. Furthermore there is limited and no required pre-application strategic planning with the utility applicant to review the key issues and the minimum information that will be required for the proceedings. Once an application is filed, there also appears to be limited planning and agreement on what the key issues of the case are in order to guide subsequent inquiry through the Interrogatory stages of the application.

Within the context of the range of applications received, we would expect there to be a clarity over the expectations of what the BCUC deem critical to review for each application and what process and information would make the application process effective and efficient and that this be documented in internal and external guidelines. This clarity and guidelines over each type of application is not present. We would also expect the key issues to be based on facts and economic reasoning of the application at hand to guide both applicant and the BCUC through the hearing process.

Current external application guidelines don't have the detail and are not written with the purpose of promoting an efficient and effective application process. Guidelines for large and medium size applicant's revenue requirements and rate applications are only now being considered. Other examples include application and accounting policy guidelines, needed to cover deferral accounting policies, which are inconsistent across utilities.

#### **Evidence of utility application issues:**

- The case studies identified a number of instances where interaction and open communication with stakeholders and applicants may be improved. They identified instances where these interactions were ineffective, resulting in misalignment on the scope of applications. As a result there were problems evidenced on practical hearing issues such as timing, timelines and resourcing, but also on economic misalignment on critical hearing areas which affected required information and sufficiency of applications.
- Our case examples also highlighted situations of misalignment between applicant expectation for how the application would be considered and the approach taken by the BCUC. The original proceedings and decision were much narrower in scope than the reconsideration decision. The outcome being a material miscommunication between applicant and the BCUC, rejection of the application and subsequent re-filing of the application.

Summary of Key Underperforming Effectiveness Principles:

- Consistency: in quality, process and process outcomes could be improved;
- Strong Policies, Procedures and Controls: over application screening are lacking; and
- Consultation: with applicants, should be more timely to uncover issues and application requirements and explain screening processes.

#### **Leading practices and findings from other jurisdictions:**

- Some jurisdictions include minimum filing requirements (MFR) on certain regulatory applications.
- The OEB has a site dedicated to rules, codes, guidelines and forms that gives clear direction to those involved in hearing applications. These guidelines are updated on regular annual cycles.

### **Considerations for the Task Force**

- Opportunities exist to introduce more consistent and rigorous pre-application communications, clear application guidelines, and consistent and more rigorous application screening processes.
- Such a screening process might also include guidelines of what is expected from utility applications, based on past regulatory hearings.
- Formalizing the pre-application strategic planning with the utility applicant to review the key issues and the minimum information that will be required for the proceedings should also be considered.
- Detailed Guidelines for applicants should be produced for each type of application and should be written to improve the quality of applications and to ensure an efficient and effective application process.
- All such guidelines which are meant to assist with process efficiency, need to be developed with input from applicants and intervenors alike to ensure that they are truly effective, and do not compromise the ability of participants to be effective and ultimately to support the Commission in fulfilling its mandate.
- Consideration should be given to providing more information on benefits of efficient processes like SRP and NSP and how they might better use web-based applications and other technologies like online templates and checklists for applicants.

## **4.6. Operational Processes, People**

### **4.6.1. Observation – Basic Project Management**

Basic project management appears to be inconsistently applied across the different BCUC functions on the different hearings. While each hearing is somewhat different it was noted by staff that process was not consistently followed and interactions between Commissioners, directors and staff were also inconsistent. Roles in processes are generally defined by the historical knowledge and experience of the lead staff and Commissioners, but the application of those roles varies – often a great deal. Examples include the use of staff in hearings - some Commissioners seek the view and insight of staff and directors, other Commissioners only use staff to gather information and review all information themselves. Commissioners (and the Commission panel) are clearly defined as the decision makers, but how staff works alongside and supports that group is currently an 'ad-hoc' process.

Staff are the providers of information to allow Commissioners to make decisions. This process often happens without staff opinion or view being sought. This leads to a conservative approach from staff on information provided. Little or no prioritization from staff leads to information of non-key or low-risk issues being researched, asked for from utilities and included in information passed to Commissioners. This is inefficient, conservative and does not make effective use of staff experience on key issues.

Lack of clarity of roles, key responsibilities and consistent processes outlined for Commissioners, Chair of Commissioners, directors, professional and support staff was discussed in the interviews.

A Commissioner is in a position of influence in terms of hearing process consistency. Part-time Commissioners are felt to be a cause of some inconsistency of approach and at times lack formal policy. Using more full-time Commissioners would reduce the overall number of Commissioners making it easier to implement, apply, and monitor the formalized policies applied by a smaller group of Commissioners. Part-time Commissioners are also a cause of hearing inefficiency due to lack of flexibility on hearings if timelines move around.

Certain functions and staff in those functions work independently or without supervision which sometimes leads to lack of consistency of approach in certain areas, for example, with IR quality and the use materiality in filtering questions.

Decision writing is undertaken by Commissioners. There are decision writing guidelines in place and training, however preparation of the decision is the 'bottle-neck' to hearing process as preparation and drafting decisions can take time.

#### **Evidence of basic project management issues:**

- There are currently no detailed internal regulatory process documentation (per our desktop review) that incorporates best practices and internal controls. Instead only general guideline documents exist for some processes that do not promote consistency, effectiveness and efficiency in process application.
- Formalized policies, procedures and guidelines with respect to internal processes /scheduling and allocation of work is lacking and causes inconsistency of approach in hearings.
- No BCUC internal budgets are set or monitored for hearings. Only external costs incurred are monitored.
- No tracking of time management or effort levels of staff is undertaken for hearings to ascertain what staff have been working on. Staff often carry multiple files at the same time. There is also no IT system in place to track staff time on projects. This makes assessment of staff effectiveness and efficiency difficult.
- No clarity on roles, responsibilities and accountabilities for Commissioners, Directors and staff is established on each proceeding.
- Interaction with Commissioners into the hearing process appears to be inconsistent. The case examples illustrated specific situations in which BCUC was lacking formal processes, or in which the established processes were ineffective. This contributed to difficulties with these applications. One case example theme was a lack of a process for effectively engaging Commissioners early in the application processes.
- The case examples highlight a number of instances in which the BCUC had an opportunity to take a strategic, proactive and flexible approach, but came up short in this regard. This was illustrated by decisions which had seemingly unintended or negative consequences, inquiries which could have been initiated sooner and upon the BCUC's own initiative, issues for which no effective decision was provided, and applications which followed inappropriate existing processes rather than taking an innovative approach. A few positive instances were also identified where the BCUC made adjustments mid-stream to effectively manage issues identified after proceedings had begun, specifically by using either the streamlined review process or a hybrid of written and oral hearings.
- No approach to promote consistency in process and decision making is undertaken, other than having panels of Commissioners with past knowledge of procedures.
- No debrief sessions are undertaken once hearings are completed or at other times to see what could be improved in order to continually promote best practice.
- Comments included that the quality of staff work on hearing procedures is high but that supervision of the staff output could be improved, indicated in types of IRs asked of the utility by the BCUC.

#### Summary of Key Underperforming effectiveness Principles:

- Leadership and Governance: overseeing and ensuring basic project management is in place and effective;
- Strong Policies, Procedures and Controls: to confirm the hearing process has consistency and efficient and effective processes;

- Training: training is not sufficient and needs to be continual; and
- Consistency and Predictability: both in process and decisions

#### **Leading practices and findings from other jurisdictions:**

- OPUC states that it scopes all issues at the application stage with all significant stakeholders to enable it to decide on the correct approach for the proceeding.
- Other jurisdictions generally appear to have more formalized policies, training and guidelines in place for staff and Commissioners. Manitoba’s internal hearing processes, for example, are set by the Public Utility Board rules and procedures and are all documented and understood by staff.
- The NEB has a standard process manual and uses checklists to ensure process effectiveness, uses on-line applications and templates and meets with both the applicant and stakeholders pre-application. The NEB believes that it is key that Board members understand the issues and build relationships with staff. At WSUC, the Board is required to receive, review and have knowledge of all information filed and identify the key issues for staff to then follow-up.
- At WSUC and OPUC there are legislated deadlines for application decisions and for WSUC, rates will automatically go into effect if this deadline is not met for a rate application.
- The OEB often conducts post-mortems to assess hearing processes and to identify opportunities for improvement in terms of adjudicative processes. The OEB also has regular formal and informal roundtable meetings with utility and intervenor groups, including chairs to discuss issues and areas for improvement. Training days are also given to applicants on the OEB application process. NSUARB also meets with stakeholders annually to uncover areas for improvement and they also utilize questionnaires to obtain meeting performance feedback on a timely basis.
- Staff interaction with Commissioners varies across jurisdictions but, for example at the NEB, staff drafts the decisions for the Commissioners, after getting preliminary direction from the Commissioner panel, who edit and issue those decisions. Manitoba outsources the initial drafting to outside counsel who passes decision drafts for input, edits and acceptance to Commissioners.
- WSUC has a “Lean Management” initiative and as a result are moving to make its Telecom regulations more streamlined.
- The AUC has efficiency and effectiveness initiatives that include:
  - Striving to reduce regulatory burden by the elimination of more routine, low-risk application requirements and replace them with self-reporting and spot/review surveillance;
  - Implementing a risk-based compliance and enforcement program to ensure compliance over the life of assets;
  - For generic proceedings, create principles, to ensure certainty, predictability and reduce lengthy and costly hearings; and
  - Implementation of performance-based regulation and review the results and impact of this.

#### **Considerations for the Task Force**

- Overall there is an opportunity for BCUC to take a more strategic, proactive and flexible approach to more effectively fulfil its mandate. This includes building capability and responsibility within the organization to more effectively identify emerging issues within its regulated industries and develop effective strategies to manage them and best fulfil its mandate. It also includes developing the leadership, mechanisms and resources required to take more flexible and outcome driven approach, using all of the tools and appropriate discretion provided under legislation. In-house legal resources, consistent training and full time commissioners, were noted as examples of matters that would help in this regard.

- Formally documented hearing processes should be required for each process type, including the suggested topic areas to be covered. These guidelines should document best practice policies and procedures requirements and ensure consistency for staff levels and departments. Leadership will be needed to support this initiative and its implementation.
- The formal hearing process documentation should consider also addressing, among other things, the requirement for BCUC to:
  - Clarify roles, responsibilities.
  - Detail best practice interaction between staff and Commissioners.
  - Establish responsibilities to budget and monitor hearing statistics.
  - Supervision of deliverables.
  - Provide guidelines, using risk and materiality, when considering IRs.
  - Formal debriefing sessions:
    - Hold regular cross-divisional lead staff and Commissioner meetings to discuss areas for hearing improvement and possible solutions.
    - Obtaining more regular feedback from hearing participants in both informal and formal sessions such as questionnaires and round table meetings.
    - Continue to provide feedback sessions to utilities on common complaint themes and share ideas to reduce future complaints, but sessions should be expanded to all utilities
- Internal target decision deadlines should exist for all application types and be monitored.
- Develop clear and detailed filing requirements for each application. Feedback should be sought from stakeholders and training sessions should be provided to applicant groups.
- The BCUC should consider categorizing utilities by size or other priority basis and assess if regulatory filing requirements should be adjusted for each group to achieve efficiencies and yet still be effective.
- Designate staff subject matter experts where required, with or without a third party expert support team.
- Develop checklists to ensure process completeness. Lead staff and the Chair should utilize a hearing and decision checklists, respectively, on every proceeding. For example this checklist would require the Chair and Lead Staff to sign-off that an issues list for the specific proceeding was developed with the involvement of all stakeholders.
- Establish training sessions covering best practices on a frequent basis. This should include Lead staff and Commissioner leadership training and training on materiality and relevance in the hearing process.
- Develop strategies to use more efficient hearing processes such as SRP, NSP and Alternative Dispute Resolution ('ADR') more often.
- Processes should be established to proactively address emerging issues like the emergence of alternative energy forms and technologies and new regulatory issues that arise. In particular, the emphasis should be placed on economics to drive forward arguments over key and critical issues.
- Develop a knowledge bank or information site of current jurisdiction, relevant legislation and regulations, government policies and directives, administrative law principles.
- Develop, monitor and report metrics on hearing processes.

#### 4.6.2. Observation – People, Training and Performance Management

We have covered our observations on certain people and performance management matters, BCUC's tone at the top, resources, and compensation above and we will limit our comments here to knowledge, training and development.

#### 4.6.2.1. Observation – Knowledge, Training and Development of staff and Commissioners are under-resourced at present

##### **Evidence of skills, training and staff development issues:**

- The following metrics indicate that knowledge and experience may be decreasing and that staff engagement is deteriorating:
  - Attrition levels have increased by 150% over the last five years ended in fiscal year 2014 and was 13% in 2014 (Appendix B).
  - Average years of service with the Commission has not increased significantly from 4.50 years to 5.10 years for Commissioners and has decreased from 5.12 years to 3.47 years for professional staff in the last five years ending in fiscal 2014 (Appendix B).
- Case examples provided a number of situations of applications requiring decisions on novel or difficult issues. Our findings suggest that BCUC was not well equipped to manage novel or complex applications. Overall, with additional staff capabilities and capacity, the BCUC could have supported a more expeditious resolution of these issues. This was illustrated by the case examples having reconsideration decisions, formal delays in proceedings, and otherwise drawn out regulatory timelines.
- The stewardship required of the applications, particularly to identify key issues early in proceedings and steer them with stronger direction and strategic guidance, could be improved. This observation extends to both the procedural and legal elements of the proceedings and issues, and in particular the market economic implications of the issues. Also, the requisite skills, capabilities and resources did not exist within the panel or supporting resources to effectively manage each case and all of its issues.
- Clarity of roles and key responsibilities for the CEO, Commissioners and Chair of Commissioners, directors, professional and support staff is needed. Commissioner training would improve consistency needed of policies and approach.
- A Human Resources Policy manual should be prepared and made available to staff.
- Each function group stated the need for more consistent and additional external training.
- A refresh on best practice for writing decisions was identified in interviews as providing benefits for staff.

##### **Considerations for Task Force**

- Develop a human resource capital plan to ensure desired skills are and competencies exist.
- Matters noted above should be implemented and consistent training should be made a priority of the organization.

#### 4.6.2.2. Observation – Individual and Organizational Performance Management and Incentives

Performance measurement metrics are difficult in a regulatory environment. However some examples of evidence are noted in the following areas;

## **Evidence of performance management issues and other jurisdictions :**

### **Individuals**

- Executives / Commissioners / Directors / Staff are monitored for performance, but there are typically no performance metrics tracked to assess their performance.
- No formal performance assessment of Commissioners appears to be undertaken.

### **Organizations**

- No formal organizational performance metrics are developed to monitor the operations of the BCUC other than areas like compliance data. Jurisdictions highlighted that many have staff performance metrics and extensive databases that they maintain to monitor the operations of their Commission/Board (e.g. Oregon, NEB)
- The AUC reports cost per consumer and application cycles as an example.
- Performance Metrics assessed by the Oregon Public Utilities Commission specifically relating to electric, natural gas and water utilities include:
  - Percentage of rate regulated water companies with rate designs promoting efficient use of water resources
  - Average price of electricity for residential users from Oregon Investor Owned Utilities as a percentage of the national average
  - Percentage of business customers' electric energy usage supplied by alternative suppliers
  - Number of new utility pricing programs
  - Ratio of dollars realized in energy savings per dollar of public purpose fund expenditure for Energy Trust's residential/commercial/industrial programs
  - Annual average megawatts acquired through Energy Trust programs
  - Administrative and program support costs as a percentage of annual revenues
  - Effectiveness of staff audits in preventing injuries caused by electric utility operations per 100,000 utility customers
  - Effectiveness of Utility and PUC promoted education in preventing injuries from unsafe acts per 100,000 customers
  - Personal injuries related to Natural Gas Operations per 100,000 utility customers
  - Percentage of Consumer Complaint Orders issued within 30 days of close of evidentiary record
  - Percentage of complaint investigation cases open 50 days or less
  - Percentage of customers rating their satisfaction with the agency's customer service as "good" or "excellent" in overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information
  - Extent to which the Energy Trust of Oregon meets the established internal performance measures

### **Considerations for Task Force**

- Individual performance assessment measures should be considered for each department
- Commissioners currently are not subject to individual formalized performance evaluations where performance results and areas of improvement are discussed, documented and monitored. Commissioners should be formally monitored and results factored into their individual performance appraisal processes. The leading practices managing Board of Director effectiveness would be applicable to the BCUC and its Commissioners.
- Organizational data and performance metrics should be developed and monitored and assessed against peers at times and engagement.
- Develop and implement a human resources plan to ensure employee satisfaction and engagement is high including looking at meetings with staff on matters like work/life balance,



career planning, non-salary benefits like banked overtime and flex-time strategies and ways to celebrate and reward achievement and increase overall staff retention.

## 4.7. Technology and Communication

### 4.7.1. Observation – Information Systems and Technology and Communication

Information systems, technology and communications are limited by funding and dependency on the BC Province Shared Services Ministry, which leverages the IT platforms used across the BC public sector.

IT systems utilized by the BCUC appear to be outdated and require investment and updating to address multiple needs. The output from these technology limitations is often a reliance on key individuals at the BCUC who have knowledge of precedent and past regulatory practice.

#### **Evidence of issues where technology might increase the efficiencies including the following areas:**

- Currently there is no efficient ability to research past BCUC decisions, precedent and practice which adds to BCUC inefficiency. There is a need to better organize, sort/search and filter and manage data. Information regarding past hearings is understood by key individuals with knowledge of those hearings. Absent those people, loss of vested knowledge will occur.
- System improvements were requested by the BCUC in prior years, but nothing was done due to Government constraints.
- There has been a proposal for a 'Knowledge Bank' system implementation of policies, processes, procedures, relevant legislation and guidelines and exemptions. Lack of financial resources was stated as reason for not moving this forward.
- Need to reduce duplication and risk of accidental loss or eliminate security risk exists with data being on the main server. Shared service also limits change or software change opportunities.
- The BCUC website is used as a storage repository and could be made to be more interactive..
- The BCUC compliance unit currently monitors activities using excel based technology.
- A project management tool would assist to monitor and track staff activity on hearings would help bring project efficiencies.
- An HR system would provide metrics to track and analyse the availability of staff. As an example vacations are monitored manually at present, which makes planning resources for hearings challenging.

#### **Leading practices and findings from other jurisdictions:**

- Jurisdiction reviews highlighted that many regulators have greater information system and technology capabilities and data research capabilities in place. They are able to perform word searches (enabling them to search prescient files and data effectively).
- Most peer jurisdictions are embracing technology to reach stakeholders, improve participation and improve efficiency.
- Other Peer Commissions also report more performance initiatives and status and operational metrics to the public.
- MPUB provides iPads to its Commissioners to help them have timely access to hearing information.
- OPUC utilizes video conferencing and is looking into implementing web-based electronic filings. Its regulatory documents are searchable using a Google software product.
- WSUC uses Sharepoint software which has search capability and would like to move to video conferencing.

- OEB uses Transpivitol software for regulatory documents that enables search capability and allows web-based access.
- Other Commissions and Boards use technology to allow online applications and templates and also on-line participation in hearings in many languages (e.g. NEB).
- NSUARB has an electronic case management system which facilitates paperless hearings, improved search capabilities, and remote participation in hearings to reduce costs and encourage participation. NSUARB is also looking to move to live video participation conferencing. The NSUARB's technology is separate from government's technology and its current management system was 20% funded by its government.
- Many peer jurisdictions embrace accountability and transparency and it is evident in their public disclosures. The NEB discloses its Board Strategic Plan and the NSUARB discloses its Business Plan on its website. The Government of Alberta implemented a results-based budgeting initiative to find efficiencies and areas and improvements and the AUC released its response to this initiative to the public.

### **Consideration for Task Force**

- Develop an overall IT strategy, including IT architecture, systems and technology tools requirements, including database search engines to improve efficiency, stakeholder participation and reduce regulatory burden. Consideration should be given to better managing the dependency with BC Shared Services. Funding sources for significant IT changes should be reviewed, including possibly partial government funding and any increase in levies should be appropriately consulted with utilities prior to their issuance. Comparison and leveraging the IT systems of the BC Courts and BC regulatory agencies could provide benefits for the BCUC.
- Develop a knowledge management software and other technology improvements as a priority to address risks of loss of data and efficiency and effectiveness. There may be a need to have additional in-house IT resources to support such changes, depending on the ultimate change.
- The BCUC should continue to strive to implement technology to allow on-line applications, templates and video conferencing that allows active online participation.
- Develop and implement a comprehensive engagement and communication improvement plan that is focused on supporting and engaging stakeholders, the public, intervenors, regulated entities and First Nations to foster trust and non-adversarial relationships. This should include improvements to the organization of its website, updating old guides and information currently on the site and adding new guides which are missing for certain application types, offering training and feedback sessions discussed elsewhere in this report and also using more technology and mediums of communicating and issuing notices.

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# 1. BCUC Organizational Framework Overview

This section is intended to provide a general overview of the mandate, structure, departments and key operational processes of the BCUC as background information to this report. Key findings and implications for the performance and operations of the BCUC are presented in Section 4 KPMG Evaluation of BCUC's Processes and Performance Efficiency and Effectiveness.

## 2. Mandate and Scope

The BCUC is an independent regulatory agency of the British Columbia Government that operates and administers the Utilities Commission Act (1980) (the "Act" and "UCA") to regulate primarily BC's natural gas and electric utilities, intra-provincial pipelines (establishes tolls and conditions of service), district heating systems and universal compulsory automobile insurance (basic insurance) provided by the Insurance Corporation of British Columbia (ICBC) under the Insurance Corporation Amendment Act.

The Commission also reviews energy related matters referred to it by Cabinet under Section 5 of the Act and approves the construction of new facilities planned by utilities and their issuance of securities. In addition to the above regulatory responsibilities, the Commission also reviews complaints about utilities actions, responds to general information requests regarding utilities and provides Commission prepared brochures, guidelines, Orders and Decisions and other information on current and historical hearings.

The authority of Commissioners' is provided by the *Act*, and the Commission has been given broad powers to ensure that its decisions are complied with. BCUC acts as quasi-judicial body with the power to make legally binding rulings and therefore must maintain standards of due process and fairness, and cannot be seen to act arbitrarily and without process legitimacy, stakeholder support and evidence supporting its decisions. Decisions and Orders may be appealed to the Court of Appeal on questions of law or jurisdiction.

The Commission's mission or mandate is to ensure that customers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates and that respective shareholders of those utilities receive a reasonable opportunity to earn a fair return on their invested capital. The Commission is responsible to ensure that Basic Insurance rates are adequate, efficient, just and reasonable.

The Commission's costs are recovered primarily from annual levies on the public utilities it regulates and a fixed annual fee from ICBC.

## 3. Strategy and Governance

The Commission's mission 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. Strategic reviews are undertaken periodically by the BCUC and are monitored internally by staff.

## 4. Interactions with Government

The BCUC is an independent regulatory agency of the British Columbia Government that operates and administers the *Utilities Commission Act* (1980) (the "Act") and the *Insurance Corporation Amendment Act*. Directions of Government are issued under Section 3 of the Act. The Commission also reviews energy related matters and any special inquiries of government referred to it by Cabinet under Section 5 of the Act. The Government sets the scope and mandate of the Commission and indirectly affects and shapes its strategy, governance and operating model.

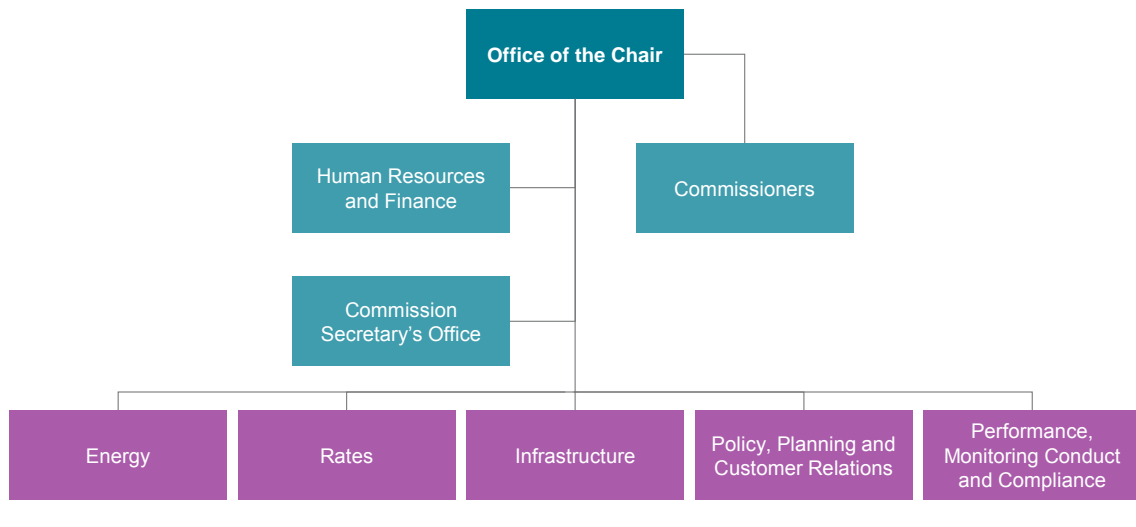
## 5. Operating Model

### 5.1.1. Organizational Structure

The current organizational structure of the BCUC is shown in figure 2 below:

**Figure 2: BCUC Organizational Chart**

*Current as of July 2014*



### 5.1.2. Departments and General Roles

The Commission is organized into seven groups or departments, as follows, in addition to the Office of the Chair and Commissioners.

#### 5.1.2.1. Office of the Chair

The Chairperson, as Chief Executive Officer of the Commission, supervises and directs the work of Commissioners and staff of the Commission. The individual may also act in the capacity as a Commissioner, as detailed below. The Chair reports to the Province of BC through the Ministry of Justice and Attorney General.

#### 5.1.2.2. Commissioners

Commissioners serve as members of panels to hear and decide on matters before the Commission. After the public hearing, the Commission panel reviews the filed evidence and arguments and issues a decision and/or an order giving reasons. In certain instances, Commissioners may act individually. For example, a single Commissioner may investigate an issue as an inquiry officer at the request of the Commission. In such a case, the Commissioner does not represent the Commission itself, but rather acts as an advisor to the Commission.

#### **Staff**

The primary function of the staff is to assist in obtaining a complete information record, by providing administrative and technical support to the Commissioners upon which a decision can be made. They review the utility's application, make information requests and provide Commission counsel with questions for witnesses who testify at the hearings. Staff are also available to assist intervenors when requested.

The staff does not advocate or argue for any particular position on the issues before the Commission.

### 5.1.2.3. Policy, Planning and Customer Relations:

The Policy, Planning and Customer Relations (PPCR) group consists of a director, two regulatory analysts and two program administrators. The group leads policy development, internal projects and Commission planning as well as media & customer relations, customer choice and other specialty activities that do not fall logically within the responsibilities of other groups. The group leads regulatory duties in areas of strategic policy, such as utility restructuring implications and First Nations issues. The group also leads all regulatory matters related to ICBC, including rate setting, design and compliance support. Members of the PPCR group regularly provide support reviewing capital projects, operating agreements, rates applications, and first nation's issues.

### 5.1.2.4. Energy

The Energy group consists of a director and three full time regulatory analysts with expertise in gas and electric supply and markets, demand side management (DSM), and energy policy to enable resource planning. The group also shares two analysts with the Policy group with backgrounds in commerce and energy conservation. The Energy group is responsible for matters related to energy supply including commodity pricing, conservation, non-traditional energy development, energy management and planning.

### 5.1.2.5. Infrastructure

The Infrastructure group consists of a director, four regulatory analysts with expertise in electrical and gas engineering, and a Mandatory Reliability Standard (MRS) analyst. The primary responsibility for the group is applications for capital projects ("CPCN") and expenditure schedules related to capital items. The engineering team also provides support to other groups in matters of capital asset maintenances, infrastructure safety & reliability complaints, energy delivery systems, and compliance reviews of project update reports.

### 5.1.2.6. Performance, Monitoring, Conduct and Compliance

This department consists of a director, one compliance analyst, and one full time administrative staff member and a part-time MRS Coordinator. The Performance Monitoring, Conduct and Compliance group was formed in 2012, in part, out of the need for the Commission to carry out compliance monitoring as required by the *Utilities Commission Act*. It is responsible for compliance monitoring and enforcement activities, proactively tracking Commission directives, and adherence to statutory reporting requirements.

### 5.1.2.7. Rates

The Rates group consists of a director and six regulatory analysts with expertise in financial accounting, cost accounting, statistical analysis and economics. This group is responsible for all matters related to applications for rate-making including rate and tariff design, rate applications. This group is also responsible for applications for administrative and financial matters such as debt and equity issuances, operating agreements, tariff changes, accounting policies, cost of service allocations & methodologies, toll applications by interprovincial pipelines and administrative asset and share acquisitions and divestures. In addition to these direct responsibilities, the group provides support to other groups for accounting, financial and rates matters in capital projects, energy supply agreements, compliance reviews and emerging energy initiatives.

### 5.1.2.8. Information Services and Commission Secretary

Information Services is led by Commission Secretary who is also a director. The Commission Secretary addresses the statutory matters in accordance with the UCA and is the official contact at the Commission for both regulated utilities and the public. The Commission Secretary oversees all incoming and outgoing communications of the Commission. Its group responds to requests for information, provides in-house IT services, media interaction, library services and maintains the Commission's information resources, including its website. This group also prepares annual reports and quarterly regulatory updates as well as providing support on process and procedural matter.

### 5.1.2.9. Human Resources and Finance

This group provides a range of financial, human resource and administration services to the Commission. The department provides recommendations and decision support for financial and human resource policies. The group is made up of one director and two assistants. The group is aided by one retired staff member (operating as a consultant) who assists with monthly timesheet and payroll activities. The group conducts background research and prepares management policies and decisions in areas such as personnel and financial management, budget preparation, internal policies, external relations with government, and suppliers. It also provides a range of administrative, financial and human resource services to the Commissioners and staff. Regulatory Processes

### 5.1.2.10. Regulatory Processes

Table 1 below summarizes the regulatory processes of the Commission which the Applicants, the public and intervenors participate in. The process categories include applications, Commission initiatives, complaints and disputes, Mandatory Reliability Standards (“MRS”) and compliance.

Table 1		
Process Category	Process Type	Items Covered
<b>Applications</b>	<b>a. Reviewed without formal process</b> <b>b. Reviewed with formal process</b> <ol style="list-style-type: none"> <li>i. Oral hearings</li> <li>ii. Written hearings</li> <li>iii. Hybrid (written and oral)</li> <li>iv. Streamlined Review Process (SRP)</li> <li>v. Negotiated Settlement Process (NSP)</li> </ol>	<b>Formal Processes cover multiple items including (non-exhaustive):</b> <ul style="list-style-type: none"> <li>▪ Rates Design / Flow Through Costs</li> <li>▪ Revenue Requirements</li> <li>▪ Resource Plans</li> <li>▪ Energy Supply Contracts</li> <li>▪ Purchase / Sale of Assets</li> <li>▪ Conservation / Demand Side Management (DSM)</li> <li>▪ Capital Expenditures (CPCN)</li> <li>▪ Reconsiderations</li> </ul>
<b>Commission Initiatives</b>	<b>a. Inquiry on issues or matters</b> <b>b. Setting targets, guidelines and procedures</b>	
<b>Complaints</b>	<b>a. Reviewed with process</b> <b>b. Reviewed without process</b>	
<b>Disputes</b>	<b>a. Reviewed without process</b> <b>b. Reviewed and adjudicated</b>	
<b>MRS</b>	<b>a. Administration</b> <b>b. Enforcement</b>	
<b>Compliance</b>	<b>a. Filings</b> <ol style="list-style-type: none"> <li>vi. Without follow-up</li> <li>vii. With follow-up</li> </ol> <b>b. Proceedings and Enforcement</b>	

The discussion below explains further some of the key BCUC process categories and types depicted above.

### 5.1.3. Applications with Public Process

The Commission typically considers applications through public hearings. Such applications include revenue requirements, rate design, certificates of public convenience and necessity (for significant new facilities or additions by utilities), applications of significant public interest, and major energy projects or reviews assigned by the Lieutenant Governor in Council. Hearings may also be initiated by the Commission in response to a complaint by a customer or an affected third party, or on its own motion.

A pre-hearing conference conducted by the Commission is sometimes held to resolve procedural questions at the start of the hearing and in some cases to clarify the scope of the hearing.

Most preliminary issues are usually known in advance of a hearing by reviewing the topics and issues noted in the application.

The Public Hearings conducted by the Commission can be oral or written:

- Written hearings are entirely through written submissions: written requests for information; filing of written evidence; and submission of written arguments and replies.
- Oral hearings, on the other hand, provide participants the ability to appear in person before the Commission, present oral evidence and ask questions of the utility's and other parties' witnesses. Oral hearings are always, by nature, combined with written evidence. The evidence is filed and oral hearings allow a cross-examination of that evidence. Witnesses present their evidence under oath or affirmation. Parties are often represented by legal counsel.

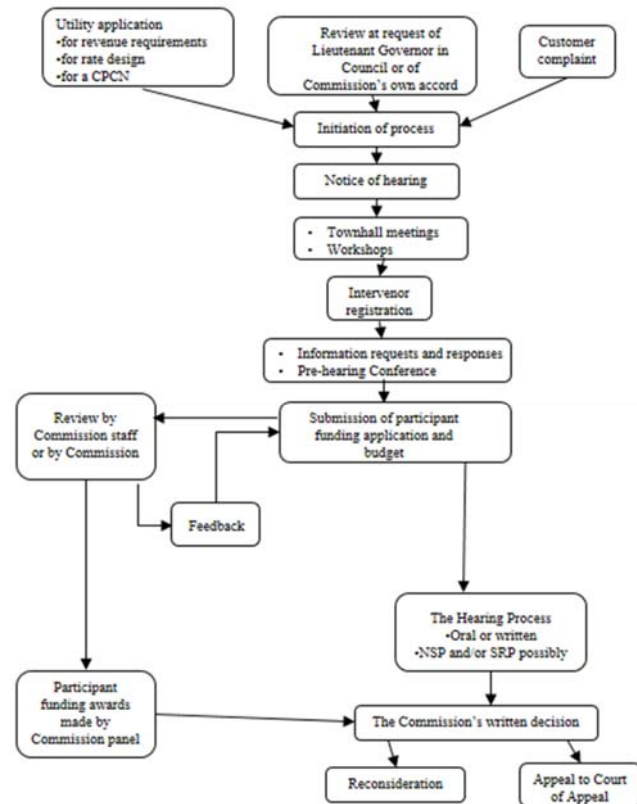
Once Commission staff and registered intervenors have reviewed a utility's application as an example, they may decide that more information is needed to verify or respond to the utility's analysis. For this reason, Commission staff and registered intervenors may request more complete information from the utility regarding its application in advance of the oral or written hearing.

Once all arguments are finished, the formal hearing process is to allow the Panel to consider the evidence and make its decision.

Figure 3 below summarizes the general hearing process and highlights the involvement and interaction of participants with the Commission. The process can have certain flexibility and not all processes follow the exact same steps.



**Figure 3: Opportunities and Mechanisms for Participating in Commission Activities**



## 5.1.4. Interactions with Stakeholders

### 5.1.4.1. Applicants

Applicants, the regulated entities, are formally involved in regulatory processes once they file applications with BCUC. Regulated entities may also be involved when the Commission begins a proceeding, usually referred to as an Inquiry on its own accord (in response to a complaint as one example) or at the direction of Government. Applicants may also be involved upon appeal or reconsiderations of decisions also.

### 5.1.4.2. Public

The public generally are the customers and other impacted parties (e.g. Community) not otherwise represented by intervenors discussed below. Public group representatives or individuals can participate as an intervenor or an interested party if they wish. An interested party is an individual or group wishing to receive all the information provided for the proceeding but who does not want to actively participate. The Commission looks to ensure the interests of unrepresented groups (often the general public as a consumer) are represented in its regulatory processes.

### 5.1.4.3. Intervenors

There are two main avenues by which an individual or group can be involved in the Commission's decision making process:

- Intervening in a proceeding or hearing or
- Participate by providing a letter of comment only

Intervenors are persons that plan to participate in the review or public hearing process. An intervention request is a document sent to the Commission to express an intention to participate in a public hearing and register as Intervenors. It may take the form of a formal legal submission, a position statement, or a hand-written letter, but it must be received by the Commission Secretary before the deadline stated in the hearing Order. Intervenors register by outlining their specific interest in the proceedings. Intervenors are expected to provide the Commission with a clear statement of their position(s), concerns and interests regarding the application or matter. Registered intervenors are entitled to make information requests of the applicant and other intervenors, file written testimony and cross-examine any witnesses who testify at the hearing. Intervenors will receive copies of the Application, all correspondence and filed documentation.

Common intervenors are residential and industrial ratepayer groups, environmental groups, independent power producers, private energy consultants and certain other individuals who regularly intervene. Local governments and community groups also intervene to address issues that affect their community. An intervenor might collaborate on some issues with other intervenors and share resources.

### Intervenor and Participant Assistance and Award

Section 118 of the *Utilities Commission Act* gives the Commission the discretion to award all or a portion of the costs incurred by a participant in a proceeding or ADR processes like pre-hearing conferences, workshops and negotiation days. The Commission issued Participant Assistance/Cost Award Guidelines to support this process. The Commission's current Participant Assistance/Cost Award Guidelines includes prescribed rates of reimbursement.

If an intervenor can clearly demonstrate the need for funding, a budget or application must be submitted to the Commission prior to the commencement of a proceeding. The filing deadline is specified in the Notice of Public Hearing. The budget is reviewed by Commission staff, and intervenors are given an indication whether their request for funding complies with the Guidelines. Some issues identified in the Budget Estimate may, in the opinion of Commission staff, fall outside the Commission's jurisdiction or be of limited relevance to the proceeding. If so, the Participant will be informed of these concerns and advised that this part of the Budget Estimate may not be funded. The Commission staff advice is not binding on the Participant or the Commission Panel and is provided only to forewarn.

An application for a cost award must be made by filing a written application with the Commission within thirty days following the last day of a proceeding (or such time as the Commission Panel directs) setting out the reasons for such an award, and any reasons why the actual application differs from the Budget Estimate. The Commission may either order the applicant utility to pay the costs awarded, in full, in part, or reject the application. The Commission Panel may establish a maximum aggregate award amount ("funding cap") for a proceeding.

## 5.1.5. Alternative and Efficiency processes

### 5.1.5.1. Alternative Dispute Resolution ("ADR")

Alternative Dispute Resolution procedures are used as an alternative to, and commonly are used to complement, the traditional public hearing process to increase efficiency and effectiveness. As an administrative tribunal, the Commission also has responsibilities and authority under the *Administrative Tribunals Act* which states, in section 11 (1), that: "Subject to this Act and the tribunal's enabling Act, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it."

These ADR processes include technical workshops, pre-hearing conferences, and discussion groups/town hall meetings to gather evidence from communities through oral presentations. This allows participants to discuss issues in a flexible, less formal and open format and often seeks

consensus on issues and allows the Commission to educate participants. Decisions may then be undertaken using the ADR process of Streamlined Review or Negotiated Settlement.

### Workshops

These are hosted by the Commission. Workshops can be used independently or as part of the hearing process. For example, a workshop can address issues specific to an application prior to a negotiated settlement process and/or hearing, or a workshop can be organized to discuss broad issues that may have implications for a number of different utilities. While workshops may not lead directly to the resolution of issues, they contribute to efficient resolution because they result in more informed public participation.

### Pre-Hearing Conferences

Pre-hearing conferences are held to allow Commission staff, the utility, and registered intervenors the opportunity to discuss and, where necessary, discuss procedural issues associated with the hearing, such as the scheduling of witnesses. The purpose of a pre-hearing conference is to make the hearing process more efficient, not just for the Commission, but for the participants also. The Commission may also convene "issues meetings" to encourage hearing participants to tentatively identify and clarify the substantive issues they intend to raise with respect to an application, so that all parties can be better prepared for the hearing. Pre-hearing conferences may identify issues to be dealt with expeditiously through a negotiated settlement process. An order will be issued at the conclusion of the pre-hearing conference that sets out the particulars of the remaining process.

### Discussion Groups/ Town Hall

The Commission receives a written commentary from the utility or the applicant may present to the hearing panel on the items discussed in such meetings, and the commentary later forms part of the material which the Commission considers in reaching a decision on the utility's application. As well, town hall meetings have been conducted by Commission staff as informal sessions for an exchange of information between the utility, its customers and Commission staff.

#### 5.1.5.2. Streamlined Review Process:

The current published Streamlined Review Process guidelines were written in March 2012 and were directed to smaller applications with a limited number of issues (half to full day) brought forward by regulated utilities. Streamlined processes save time and reduce costs and can achieve sound decisions through a procedurally fair, transparent and accessible process. It is not limited to specific types of applications and may be used in combination of an oral, written or negotiated settlement process. The decision to initiate a Streamlined Review will be made by the Commission Panel. This decision will be made after thorough consideration of the application, the request and preferences of the applicant, the preferences and likely interests of registered intervenors and affected parties, as well as any other matter it considers relevant.

This process provides all stakeholders the opportunity to collectively gather information and actively participate in building an understanding of the issues involved in a utility application. The Streamlined Review Process is intended to expedite the flow of information between the applicant, registered intervenors and the Commission by incorporating the benefits of a workshop, encourage Participants representing similar issues to work together; information requests and an oral hearing into one efficient process.

#### 5.1.5.3. Negotiated Settlement Process:

Negotiated settlement is an alternative to a hearing that allows the utility and intervenors to meet and discuss the facts and issues in dispute in an application that has been submitted to the Commission. The purpose of the negotiated settlement process is to resolve some or all of the items in the application. If the process is successful and a settlement is reached, the participants will craft their own resolution to the issues in an application. Even if the process does not result in a settlement

agreement, it can be a useful means of clarifying and limiting the range of issues in dispute prior to the hearing.

On receipt of an application from a utility, the Commission will first decide on an appropriate process and if NSP, which issues should proceed to a negotiated settlement and which should proceed to a full hearing. The decision to initiate the negotiated settlement process will be made by the Commission and confirmed by order, after consideration of the application, the preference of the applicant, and likely interests of affected parties. The utility and registered intervenors are invited to comment on this initial selection

### The Role of Commission staff in the negotiations

Staff participation in settlement discussions, and alternative dispute resolution is generally important to the effectiveness of the process. First, they help to keep the process moving forward. Staff provide certain skills, knowledge and experience that may otherwise not be available to all participants. The responsibilities of staff present in the negotiations include:

- Supplying factual information that may otherwise not have been brought to the attention of the participants;
- Describing possible implications of settlement proposals for unrepresented parties;
- Advising the participants of any precedents recognized by the Commission; and
- Ensuring that the participants are aware of concerns of the Commission panel insofar as they are known. In summary, the responsibility of staff is to ensure that the interests of all affected parties are taken into account, while refraining from endorsing a particular position.
- The Commission Chair appoints a Facilitator that may be a Commission staff member.
- The Commission may appoint a Commission staff, separate from other Commission staff in the proceedings, may take on the role of an Active Participant which may involve being active in negotiations, taking positions and providing a letter of support or comment on proposed settlements.

When the participants eventually arrive at a broadly supported settlement, the utility or Commission staff draft an agreement which is circulated amongst the participants for signature. The final settlement is presented to the Commission for approval. The Commission can accept or reject the settlement package as a whole. If, however, the Commission is concerned about issues in the package, it can raise the issues with the participants and determine whether they can agree to the change to the package.

### 5.1.6. Reconsideration and Appeals

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision.

#### Reconsideration

An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*.

#### Court of Appeal

Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision.

## Complaint to Ombudsman

If a party is dissatisfied with the Commission's procedure, a complaint can be made to the Ombudsman, however, only procedural issues will be reviewed by the Ombudsman. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.

### 5.1.7. Complaints

The Commission handles complaints under Sections 25, 47, 58, and 72(1) of the *Utilities Commission Act*. The Commission has the jurisdiction to hold an inquiry or a hearing to determine an application by or on behalf of any interested party.

The Commission generally receives these kinds of complaints:

- complaints filed against regulated utilities by other utilities, individuals or groups;
- complaints filed by utility customers regarding their bills;
- complaints made by shippers on intra-provincial oil pipelines; and
- The Commission will handle ICBC complaints related to the regulated Basic Insurance.

## Appendix B BCUC Metrics and Peer Group Jurisdictional Key Performance Indicators and Benchmarks

### BCUC Metrics<sup>1</sup>

<b>AREAS OF INTEREST</b>							
<b>Fiscal Year Ends</b>	<b>F09/10</b>	<b>F10/11</b>	<b>F11/12</b>	<b>F12/13</b>	<b>F13/14</b>	<b>% Change F09/10 to F13/14</b>	<b>Report Discussion Section Reference</b>
<b>Scope and Government Direction</b>							
<b>GOVERNMENT DIRECTION:</b>							
# of Special Directives issued to BCUC	1	3	3	9	6	500%	4.1.1, 4.2.2
<b>Staffing</b>							
<b>STAFFING LEVELS:</b>							
<b>Staffing Levels at End of Fiscal Year:</b>							
# of Full-time commissioners	1	1	1	1	1	0%	4.4.1
# of Part-time commissioners	9	11	10	11	11	22%	4.4.1
# of FTE commissioners-by hours (assume 35hr work week for 48 weeks a year) <sup>2</sup>	4.36	3.75	3.73	5.58	5.54	27%	4.4.1
# of Directors	4	4	4	7	7	75%	4.4.1
# of Executive officers (currently just CEO)	1	1	1	1	1	0%	4.1.2, 4.1.3, 4.4.1
# of other staff	12	11	13	12	11	(8%)	4.3.1
# of Regulatory staff (professional staff)	10	11	12	16	17	70%	4.4.1
# of FTE all Staff during year (excludes commissioners)	28	28	30	34	38	36%	4.1.3
<b>Staff Attrition Levels, Service and Terms and Compensation</b>							
<b>ATTRITION LEVELS ( # of Staff departures in year )(%):</b>	2 (7%)	3 (11%)	6 (20%)	4 (12%)	5 (13%)	150%	4.6.2
<b>SERVICE YEARS:</b>							
Average years with the commission- Commissioners	4.50	4.91	4.64	4.50	5.10	(13%)	4.4.1, 4.6.2
Average years with the commission - Professional Staff	5.12	2.55	3.25	2.88	3.47	(32%)	4.6.2

NRA – Information is not readily available from the records of the Commission

<sup>1</sup> These BCUC Metrics have been prepared by management without audit, review or verification by KPMG.

<sup>2</sup> FTE for part-time commission, by hours, was calculated using a 35 hour work week (1680 hours/year) with an hourly rate of \$525 (daily rates) and 7.5 hours per day assumptions.

<b>AREAS OF INTEREST</b>							
<b>Fiscal Year Ends</b>	<b>F09/10</b>	<b>F10/11</b>	<b>F11/12</b>	<b>F12/13</b>	<b>F13/14</b>	<b>% Change F09/10 to F13/14</b>	<b>Report Discussion Section Reference</b>
<b>COMPENSATION:</b>							
<b>Salary (and Benefits – as indicated):</b>							
Average annual compensation for FT Commissioners, excluding benefit	\$113,500	\$113,500	\$113,500	\$113,500	\$113,500	0%	4.1.2, 4.2.1
Daily Rate for PT Commissioners, excluding benefits	\$525	\$525	\$525	\$525	\$525	0%	4.1.2, 4.2.1
Part-time Commissioner Billings (\$), excluding benefits	\$513,287	\$440,681	\$439,014	\$656,364	\$651,270	27%	4.3.1
Directors	\$123,366	\$128,493	\$136,748	\$116,000	\$116,000	(6%)	4.3.1
Executive Officer (CEO), excluding benefits	\$180,000	\$180,000	\$180,000	\$180,000	\$180,000	0%	4.3.1
Total Staff Benefits (\$)	\$382,991	\$403,651	\$403,100	\$489,431	\$641,414	67%	4.3.1
Total Salaries and Benefits per Annual Report	\$3,116,354	\$3,143,469	\$3,408,230	\$3,903,784	\$4,314,725	38%	4.3.1
Average Salary and Benefit Levels, per employee (\$)	\$111,298	\$112,267	\$113,608	\$114,817	\$113,545	2%	4.1.2

<b>Expenditures/ Costs (\$) and Certain Performance Metrics</b>							
BCUC total costs of operation	\$6,671,922	\$6,031,155	\$6,759,836	\$7,945,665	\$7,619,441	14%	4.1.2, 4.1.3, 4.3.1
BCUC budgeted costs per Annual Report <sup>3</sup>	\$6,211,000	\$6,674,000	\$6,674,000	\$6,674,000	\$6,674,000	7%	4.3.1
Difference between budget and actual (over budget)	\$460,922	(\$642,845)	\$85,836	\$1,271,665	\$945,441	105%	4.1.2, 4.3.1
Total revenue deferral per annual report <sup>4</sup>	\$335,407	\$694,974	\$116,461	\$574,358	\$525,217	57%	4.1.2, 4.3.1
Total expenditures per utility customer of major regulated utilities	\$2.29	\$2.05	\$2.27	\$2.66	\$2.51	10%	4.3.1
Total expenditures per ICBC customer and customer of major regulated utilities	\$1.10	\$0.98	\$1.08	\$1.26	\$1.19	8%	4.3.1
Total expenditures as a percentage of revenue (gigajoule) of:							
Major regulated utilities and ICBC	0.10%	0.09%	0.09%	0.10%	0.10%	0%	4.3.1
Major regulated utilities	0.14%	0.12%	0.13%	0.15%	0.15%	7%	4.3.1
Professional Services and Consultant Costs:	\$1,828,517	\$1,384,035	\$1,759,283	\$2,065,048	\$1,425,541	(22%)	4.3.1
Intervener Costs Granted	\$1,387,981	\$1,831,923	\$241,781	\$2,106,516	\$1,727,130	24%	4.5.2
Recovered Proceeding Costs, including consulting costs	\$2,415,562	\$2,362,558	\$2,072,253	\$2,191,200	\$1,423,003	(41%)	4.3.1

<sup>3</sup> Budgeted operation costs were not adjusted for many years. BCUC is amending its budget for 2015.

<sup>4</sup> Revenue deferral amounts are collected in levies charged to utilities in the subsequent year.

<b>Regulatory Hearings</b>							
<b>Utility Hearings:</b>							
Applicants with more than \$1B in regulated revenues	18	25	20	23	15	(17%)	4.3.1
Other less than \$1Billion in regulated revenues	7	12	13	11	10	43%	4.3.1
Total	25	37	33	34	25	0%	4.1.2, 4.3.1

<b>Applications, Commission Initiated Inquiries and Number of Decisions and Orders Processed</b>							
<b>Number of Applications:</b>	197	239	257	266	252	28%	4.1.1, 4.1.2
Reviewed without a hearing or alternative process	165	207	230	228	218	31%	4.1.1
Reviewed with a formal hearing/alternative proceeding							
Oral Hearings	4	4	1	3	4	0%	4.3.1
Written Hearings	22	31	27	44	34	55%	4.1.1, 4.6.1
Streamlined Review Processes	1	0	2	1	6	500%	4.6.1
Hybrid processes (written and oral)	0	0	0	1	0	0%	4.3.1
Negotiated Settlement Processes	6	4	2	1	0	(100%)	4.3.1, 4.5.1
Total	33	39	32	49	44	33%	4.3.1
<b>Topic areas of a high volume of the above applications:</b>							4.3.1
CPCN	4	8	4	11	8	100%	4.3.1
Rates Design	0	2	1	0	1	100%	4.3.1
Revenue Requirements	7	7	4	9	3	(57%)	4.3.1
Energy Supply Contracts	1	1	0	0	3	200%	4.3.1
Purchase/Sale of Assets	1	1	4	0	3	200%	4.3.1
Conservation/Demand Side Management (DSM)	1	0	1	0	0	(100%)	4.3.1
Reconsideration	5	6	3	3	5	-	4.3.1
Capital expenditure	3	2	0	2	0	(100%)	4.3.1
Mandatory Reliability Standards (MRS)	1	0	3	1	2	100%	4.3.1
Other	7	8	9	11	12	21%	4.3.1
Tariff	3	4	3	12	7	133%	4.3.1
<b>Number of Commission Initiated Inquiries- excluding gas marketing</b>	0	0	1	0	2	200%	4.3.1

<b>AREAS OF INTEREST</b>							
	<b>F09/10</b>	<b>F10/11</b>	<b>F11/12</b>	<b>F12/13</b>	<b>F13/14</b>	<b>% Change F09/10 to F13/14</b>	
<b>Decisions and Orders:</b>							
Decisions & Reasons	33	39	32	49	44	33%	4.1.1
Orders	294	390	383	336	371	26%	4.1.1
Orders and Letters of Direction Issued	424	415	398	407	443	5%	4.3.1
Internal Target Decision Deadlines (Days) List by type	Only target is to release decision/reasons ≤ 3 months after final argument					NA	
# days for application revisions (receipt to issue) for all hearings	174	144	196	205	174	-	4.3.1



Cycle Times (application to decision) – non-hearings	36	39	39	40	40	10%	4.3.1
Hearing/Alternative Dispute Resolution Days	39.5	42.5	4	16	33.5	(16%)	4.3.1
<b>Information/ Technical Workshops and Information Requests</b>							
<b>Number of Information/Technical Workshops Sponsored By Applicant</b>	9	7	2	7	5	(44%)	4.3.1
<b>Number of Information Requests by:</b>							
Interveners to Utilities	2,112	NRA	3,570	2,976	NRA		4.5.3
Commission Staff to Utilities	1,190	NRA	2,571	2,458	NRA		4.1.1, 4.5.3
<b>Customer Complaints and Disputes (#)</b>							
<b>Number of Utilities Complaints</b>	173	309	280	544	762	340%	4.1.1
<b>Gas Marketers Complaints</b>	293	286	129	92	43	(85%)	4.3.1
<b>Gas Marketer Inquiries</b>	2	4	2	2	-	(100%)	4.3.1
<b>Number of Gas Marketer Disputes</b>	4,097	2,554	1,839	1,260	447	(89%)	4.3.1
<b>Compliance (#) and Penalties</b>							
(note: Compliance group did not exist & Compliance filings not tracked until Nov 1. 2012-2013 year)							
	<b>F09/10</b>	<b>F10/11</b>	<b>F11/12</b>	<b>F12/13</b> partial year starting Nov. 1, 2012 <sup>5</sup>	<b>F13/14</b>		
<b>Number of compliance filings and reviews in the year:</b>	NRA	NRA	NRA	148 (estimated full year 335)	337	(5%)	4.3.1
<b>Number of compliance proceedings - items taken to Commission</b>	NRA	NRA	NRA	0	10	1000%	4.3.1
<b>MRS Proceedings (stats by calendar year as reported by WECC)</b>	1	13	26	21	19	1800%	4.3.1
<b>Penalties issued</b>	0	0	0	0	0	0%	4.3.1

<sup>5</sup> Compliance group did not exist & Compliance filings not tracked until Nov 1. 2012-2013 year.

Peer Group Jurisdictional Key Performance Indicators and Benchmarks<sup>1</sup>

Area of Interest	BCUC	Manitoba Public Utilities Board	Ontario Energy Board	Québec – Régie de l'énergie	Alberta Utilities Commission	Nova Scotia Commission (Utility and Review Board)	Washington State Utilities Commission	Oregon Public Utility Commission	National Energy Board	KPMG Observations	Report Discussion Section Reference
<b>Note: Information is from the most recently completed fiscal year, unless specified</b>											
Most recently completed fiscal year	2013/2014	2013/2014	2012/2013  Note – Other data timelines are noted. e.g. Compliance	2012/2013	2012/2013	2013/2014	2013	2013	2013		
<b>Areas of Responsibility:</b>											
Regulates natural gas utilities	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	The Ontario Energy Board, Manitoba Public Utilities Board (excluding funeral home regulation) and the Alberta Utilities Commission (excluding water regulations) are closest to BCUC in general scope or area of regulatory responsibilities	4.1.1
Regulates electricity utilities	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		
Regulates pipelines (interprovincial or other)	Yes	Yes	Yes (intraprovincial)	No	Yes	Yes	Yes, Interstate and safety	No	Yes		
Regulates universal compulsory automobile insurance	Yes	Yes	No	No	No	Yes	No	No	No		
Reviews ratepayer complaints and disputes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No		
Regulates the licensing of funeral homes	No	Yes	No	No	No	No	No	No	No		
Regulates water and/or sewer and transportation	No	Water and sewer rates, but not for City of Winnipeg; Approval of Fixed fee transportation agreements by City of Winnipeg	No	No	Yes, water	Yes	Yes, including sewer	Yes, water	Yes, as per below		
Regulates gaming	No	No	No	No	No	Yes	No	No	No		
Regulates telecommunications utilities	No	No	No	No	No	No	Yes	Yes	No		
Regulates safety and consumer protection	No	Safety for natural gas and propane utilities. Consumer protection in	<i>Energy Consumer Protection Act, 2010</i> which addresses	No	No	No	Yes	No	Yes, per below		

NRA – Information is not readily available from the records of the Commissions/Boards presented.

<sup>1</sup> These metrics have been prepared and supplied by management of the respective Commissions/Boards presented without audit, review or verification by KPMG.

Area of Interest	BCUC	Manitoba Public Utilities Board	Ontario Energy Board	Québec – Régie de l'énergie	Alberta Utilities Commission	Nova Scotia Commission (Utility and Review Board)	Washington State Utilities Commission	Oregon Public Utility Commission	National Energy Board	KPMG Observations	Report Discussion Section Reference
		setting fees for cashing of government cheques and prepaid funerals	electricity retailing and gas marketing								
Regulates solid waste disposal	No	No	No	No	No	No	Yes	No	No		
Others (list)	None	Appeals of Highway Traffic Board decisions; Appeals for the provision of 911 service provision Duties as assigned	None	None	Wholesale electricity markets	Halifax-Dartmouth Bridge Commission Payday loans Liquor licensing Petroleum products pricing Public passenger transportation Railways Property Valuation Assessment Appeals Criminal Injury Compensation Appeals Expropriation (Valuation) Applications Film Classification Appeal Fire Safety Appeals Municipal and School Board Boundaries Planning Appeals	Energy facility siting	None	Oil Traffic tolls and tariffs Export and import of Energy Energy studies and advisory function Environmental protection		

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Act and Regulations Operating Under:	<p>Utilities Commission Act</p> <p>Insurance Corporation Amendment Act</p> <p>Others NRA</p>	<p>The Gas Pipe Line Act</p> <p>Crown Corporations Public Review and Accountability and Consequential Amendments Act</p> <p>Greater Winnipeg Gas Distribution Act</p> <p>Public Utilities Board Act</p> <p>The Electric Reliability Act</p> <p>The Manitoba Hydro Act</p>	<p>Ontario Energy Board Act, 1998</p> <p>Electricity Act, 1998</p> <p>Energy Consumer Protection Act, 2010</p> <p>Municipal Franchises Act</p> <p>OEB Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario</p>	<p>Act respecting the Régie de l'énergie</p> <p>Act respecting energy efficiency and innovation</p> <p>Act respecting the implementation of the Quebec Energy Strategy and amending various legislative provisions</p>	<p>Alberta Public Agencies Governance Act</p> <p>Electric Utilities Act and regulations</p> <p>Environmental Protection and Enhancement Act</p> <p>Fair Trading Act and Regulations</p> <p>Financial Administration Act and regulations</p> <p>Freedom of Information and Protection of Privacy Act and regulations</p> <p>Gas Distribution Act</p> <p>Gas Utilities Act and Regulations</p> <p>Government Organization Act Hydro and Electric Energy Act and Regulations</p> <p>Municipal Government Act and regulations</p> <p>Natural Gas Marketing Act and regulations</p> <p>Oil and Gas Conservation Act</p> <p>Petroleum Marketing Act</p> <p>Pipeline Act and regulations</p> <p>Public Utilities Act and regulations</p>	<p>Assessment Act Consumer</p> <p>Protection Act</p> <p>Education Act</p> <p>Electrical Installation and Inspection Act</p> <p>Electricity Act</p> <p>Energy Resources Conservation Act</p> <p>Expropriation Act</p> <p>Fire Safety Act</p> <p>Gaming Control Act (Part II)</p> <p>Gas Distribution Act</p> <p>Halifax-Dartmouth Bridge Commission Act</p> <p>Halifax Regional Municipality Charter</p> <p>Halifax Regional Municipality Water Commission Act</p> <p>Heritage Property Act</p> <p>Insurance Act</p> <p>Liquor Control Act</p> <p>Maritime Link Act</p> <p>Motor Carrier Act</p> <p>Motor Vehicle Transport Act of Canada</p> <p>Municipal</p>	<p>Washington State Administrative Procedure Act (APA)</p> <p>RCW 80 (Utilities) WAC 480</p>	<p>Oregon Administrative Rules (OAR) Chapter 860, Oregon Revised Statutes 756,757,758, and 759</p>	<p>National Energy Board Act</p>		4.7.1

<i>Area of Interest</i>	<i>BCUC</i>	<i>Manitoba Public Utilities Board</i>	<i>Ontario Energy Board</i>	<i>Québec – Régie de l'énergie</i>	<i>Alberta Utilities Commission</i>	<i>Nova Scotia Commission (Utility and Review Board)</i>	<i>Washington State Utilities Commission</i>	<i>Oregon Public Utility Commission</i>	<i>National Energy Board</i>	<i>KPMG Observations</i>	<i>Report Discussion Section Reference</i>
						<i>Government Act</i>  <i>Nova Scotia Power Finance Corporation Act</i>  <i>Nova Scotia Power Privatization Act</i>  <i>Petroleum Products Pricing Act</i>  <i>Petroleum Resources Act</i> <i>Petroleum Resources Removal Permit Act</i>  <i>Pipeline Act</i>  <i>Public Utilities Act</i>  <i>Railways Act</i>  <i>Revenue Act</i>  <i>Technical Safety Act</i>  <i>Theatre and Amusement Act</i>  <i>Underground Hydrocarbons Storage Act</i>  <i>Utility and Review Board Act</i>  <i>Victims' Rights and Services Act</i>					
<i>Staffing Levels at End of Year:</i>											
# Full-time (FT) commissioners	1	1	6	7	8	8	3	3	6	BCUC and the MPUB had the lowest number of FT and highest number of PT Commissioners	4.4.1
# Part-time (PT) commissioners	11	9	6	3	7	0	0	0	6		
Total commissioners	12	10	12	10	15	8	3	3	12		4.4.1

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# Full-time Equivalent (FTE) commissioners	5.5	2	NRA	NRA	9.5	8	3	3	NRA		4.4.1
# FTE Judges, if applicable	n/a	n/a	n/a	NRA	n/a	N/A	5	6	n/a	Jurisdictions WSUC and OPUC use judges in their hearing processes	4.4.1
# Directors	7	n/a	Our department heads e.g. General Counsel, HR, Applications, etc. are called Vice-Presidents. Below VPs are Managers.  We have 5 VPs who, along with the Chair, make up the Executive Management Team.	NRA	10	N/A	5	5		BCUC level of directors was comparable to other jurisdictions, but other jurisdictions use in them in a Board capacity	4.4.1
# Executive officers or FTE if some part-time	1	1	6 (see above)	NRA	6	1	1	0	2	Many jurisdictions have a larger executive team than BCUC	4.3.1
# All other staff	30	6	See below	66	135	31	141	127	392	MPUB relies more on external consultants	4.1.3
# FTE staff (excluding commissioners)	38	7	171	NRA	135	32	166	126	436	BCUC has the third lowest number of FTEs across all jurisdictions	
Average years with the commission/board-commissioners	5.10	3.5	Maximum appointment of 10 years	NRA	4.33	14.4	7+	5.25	NRA	BCUC and MPUB have lower levels, possibly due in part to their higher use of PT commissioners	
Average years with the commission/board-professional staff	3.47	7	NRA	NRA	7.39	11.6	11	NRA	NRA	BCUC and MPUB have lower levels which may impact	

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										knowledge levels.		
Attrition Rates (Staff departures) (#) during the most recent year	13%	0	4.7% voluntary	NRA	11.93%	3	5.5%	11%- includes professional and support staff	NRA	BCUC had a high attrition rate		
Minimum contract term of employment or appointment (Years): FT Commissioners	1-5 years	No minimum	First term of a Board Member shall not exceed 2 years. Reappointments not to exceed 5 years. Term is determined by the LGIC who does appointments. Ten year overall maximum appointment for any Board Member.	NRA	5 maximum not to exceed 12 consecutive years	Until age 70 on good behaviour	6	4	No minimum Maximum term of 7 years	BCUC has a lower minimum term than many the other jurisdictions		
Minimum contract term of employment or appointment (Years): PT Commissioners	1-5 years	No minimum	Same as above	NRA	Varies	Determined by OIC at time of appointment	n/a	n/a	No minimum or maximum term (generally appointed for 2-4 years)	BCUC has a lower minimum term than many the other jurisdictions		
Average Salary and Benefit Levels (\$):					The AUC's Compensation program is market competitive and market current, targeting the 50 <sup>th</sup> percentile of comparable base salaries for each role. The AUC does not use pay bands to establish base salaries.					BCUC FT Commissioner and director salary level is less than all other jurisdictions reported, and is expected to be below AUC as AUC pays market competitive salaries.	4.1.3	
Average annual compensation for FT Commissioners	\$113,500	\$150,000	\$160,000	NRA		\$157,000 (2014)	\$149,386	\$135,983	NRA		4.2.1	
Hourly Rate for PT Commissioners	\$525	\$146 per meeting; \$255 per day	\$800 per diem	NRA		Determined at time of appointment, no fixed scale	n/a	n/a				
Directors	\$116,000	\$150,000	N/A	NRA		N/A	\$128,656	\$117,588				
Executive Officers (for BCUC also a Commissioner)	\$180,000	\$120,000	N/A	NRA		\$131,000 (2014)	\$135,924	n/a				
Total salary and benefits for all staff(\$)- all	\$4,314,725	\$828,000 (including Board members)	\$26,090,752	NRA		\$19,011,000	\$4,046,000 (2014)	\$12,241,768	\$12,057,927			BCUC ended its incentive pay program, but OEB has incentive by for
Average Salary and Benefit Levels, per employee (\$)	\$113,454	\$48,705	NRA	NRA		\$149,693	\$101,000 (2014)	\$86,821	\$94,944 (includes loaded benefits at 58%)			

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Bonus program or other recognition programs ? Yes or No? List	Yes - 5.9% of base pay (Ended 2014)	No	Yes - Incentive pay plan for Vice Chairs (18%), full time Board Members (16%), and Board Chair (20%). Percentages shown are of base salary.	NRA	Yes- service recognition and achievement awards	Yes "At risk" pay for performance for those at maximum comparatio	No	Merit (for exceptional performance, administered rarely)	Yes – Performance pay for all staff tied to their performance and the organization's performance  Chairman's Award Annual Rewards & Recognition Program (Event) Kudos Instant Awards of Distinction	Board members and NEB and AUC has performance pay for all staff tied to also organization's performance compared to plan.  Certain jurisdictions have other incentive recognition programs including OPUC and NEB	4.1.3
Performance metrics reviewed in assessing performance of Professional staff/Commissioners (list them)	Annual Performance Review (not applicable for Commissioners)	None	Yes. For list, please see Appendix B of the Business Plan, which provides the scorecard against which the OEB is measured.  <a href="http://www.ontarioenergyboard.ca/oeb/Documents/Corporate/OEB_Business_Plan_2014-2017.pdf">http://www.ontarioenergyboard.ca/oeb/Documents/Corporate/OEB_Business_Plan_2014-2017.pdf</a>	NRA	The AUC conducts annual performance reviews for all employees to determine their individual contributions to business plan and operational plan goals, and to assess their competencies. The AUC business plan includes over 30 performance measures established to track performance made against business plan objectives	Members: Decision writing times  Staff: Core competency and specific goals set annually (semi-annual reviews)	Performance expectations set for each employee, excluding Commissioners and Commission Chairs	Annual Performance Review		BCUC and WSUC do not have annual performance reviews for Commissioners and the Chair	4.3.1, 4.3.2
<b>Expenditures / Costs of Commission/Board:</b>											
Total costs of operation of commission/board (\$)	\$7,619,441	Annual budget is \$1.35 million, exclusive of costs reimbursed by utilities	\$35,595,501	\$14,209,226	\$33,475,797	\$9,449,000 (including adjudicative mandates)	\$22,951,012	\$20,450,589	\$69,600,000	BCUC is most comparable to NSUARB and lower costs than most.	
Number of customers of utilities regulated by the commission/board (#)	6,400,464	1,500,000	Electricity Consumers ≈4.9 million customers  Natural Gas Consumers ≈ 3.4 million customers	NRA	2,861,701	NRA-Unknown – not tracked	NRA	3,190,000		BCUC is most comparable to OEB	



Area of Interest	BCUC	Manitoba Public Utilities Board	Ontario Energy Board	Québec – Régie de l'énergie	Alberta Utilities Commission	Nova Scotia Commission (Utility and Review Board)	Washington State Utilities Commission	Oregon Public Utility Commission	National Energy Board	KPMG Observations	Report Discussion Section Reference
Expenditure per capita	\$1.66	\$2.77	\$2.63  Also see the OEB's Yearbook of Electricity Distributors: <a href="http://www.ontarioenergyboard.ca/oeb/Documents/RRR/2013/Yearbook_of_Electricity_Distributors.pdf">http://www.ontarioenergyboard.ca/oeb/Documents/RRR/2013/Yearbook_of_Electricity_Distributors.pdf</a>	\$1.74	\$8.32	\$10.04	\$3.29	\$5.2	\$1.98	BCUC has the lowest expenditure per capita	4.1.2
Total expenditures per utility customer of regulated utilities (\$/ customer)	\$1.19	\$0.90	\$4.24 Also see the OEB's Yearbook of Electricity Distributors: <a href="http://www.ontarioenergyboard.ca/oeb/Documents/RRR/2013/Yearbook_of_Electricity_Distributors.pdf">http://www.ontarioenergyboard.ca/oeb/Documents/RRR/2013/Yearbook_of_Electricity_Distributors.pdf</a>	NRA	\$11.70	NRA-See above – cannot calculate as # of customers not tracked	NRA	\$4.10	NRA	BCUC has second lowest expenditure level per regulated customer	
Revenue of utilities regulated by the commission/board (\$)	\$7.6 B	\$2.7 B (excludes water/sewer)	25.6 billion Also see the OEB's Yearbook of Electricity Distributors: <a href="http://www.ontarioenergyboard.ca/oeb/Documents/RRR/2013/Yearbook_of_Electricity_Distributors.pdf">http://www.ontarioenergyboard.ca/oeb/Documents/RRR/2013/Yearbook_of_Electricity_Distributors.pdf</a>	NRA	\$12.6 B	\$1,6B (2013)	\$6.2B	\$4.8B	NRA		
Total expenditures as a percentage of revenue of regulated utilities	0.10%	0.05%	0.14%	NRA	0.27%	0.59%	0.4%	0.4%	NRA	BCUC has second lowest expenditure level per regulated revenue	
Professional services and consultant costs:	\$1,425,541		\$3,748,892	NRA	\$4,521,024 (includes \$2.2 million of one-time IT costs and \$0.5 million of ongoing IT costs)	\$4,115,000	NRA	NRA	NRA		
<b>Breakdown of Professional and Consultant Costs for the year (\$):</b>											
Intervener costs granted/covered by Utilities (\$)	\$1,727,130	\$1,390,000	\$7,131,023	\$4,095,823	\$4,300,000	≈ \$60,000 (Note: This is an unusual year. Cost awards to intervenors are rare. Note also	None	\$885,772 (includes Issue Funds, Matching Funds and Citizen's Utility Board Funds)	NRA		

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						that the Consumer Advocate and Small Business Advocate costs are funded by the applicant utility.					
Recovered Proceeding Costs, including recoverable consultant costs (\$)	\$1,423,003	\$8,823,000	\$8,586,064	NRA	None	\$4,198,000 (includes actuarial consulting fees for auto insurance filings of \$54,000)	n/a	NRA	NRA		
<b>Decisions and Orders Processed:</b>											
Number of Decisions	44	225	475	184	710 (inclusive of decisions, delegations and cost orders)	500	3,028 (docketed filings)	Approx. 300/year	18	BCUC has the second lowest number of decisions	
Number of Orders	371	158	NRA	NRA	NRA	608 including procedural Orders	NRA	493 (510- 2012)	42	BCUC has the second lowest number of orders	
	415	383	NRA	NRA	710		NRA	NRA	60		
Legislated target decision deadlines (days) list by type	N/A	N/A	Legislated requirement to issue an order which embodies the Board's final decision in a proceeding within 60 days after the making of the final decision. In practice decisions are issued with the order within 60 days of the close of record (reply argument) in a hearing.  Self-imposed (not legislated) performance metrics vary by application type and hearing type. See: <a href="http://www.ont">http://www.ont</a>	NRA	100% of decisions related to MSA matters are issued within 90 days after the close of record 100% of need and facility decisions are issued within 180 days of the application being deemed complete. Decisions regarding micro-generation disputes are issued within 30 days after the close of record	Planning Appeals  60 days unless varied in the interests of justice  Auto Insurance Applications: 155G applications are deemed approved in 60 days unless Board extends timeline or provides a Decision 155 applications are deemed approved in 30 days unless the Board provides a Decision	11 months	Rate cases - 10 months (~ 300 days) from filing; affiliate interest applications - 6 months	80% of decisions issued within 12 weeks	OEB, AUC, NSUARB, WSUC, OPUC and NEB have legislated target decision deadlines, unlike BCUC.	4.6.1

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			<a href="http://arioenergyboard.ca/OEB/Industry/Regulatory+Proceedings/Applications+Before+the+Board/Performance+Standards+for+Processing+Applications">arioenergyboard.ca/OEB/Industry/Regulatory+Proceedings/Applications+Before+the+Board/Performance+Standards+for+Processing+Applications</a> .  By way of example: <b>Distribution Rates</b> - oral hearing 220 days - standard written hearing 185 days <b>Facilities</b> – oral hearing 210 days, written hearing 180 days.								
Internal target decision deadlines (days) list by type	Target to release Decision/Reason ≤ 3 months after final arguments	Rate applications: <ul style="list-style-type: none"> <li>• Gas – 45 days</li> <li>• Auto – 45 days</li> <li>• Electricity – 60 days</li> <li>• Water &amp; sewer – 6 months</li> </ul>	See performance metrics above.	NRA	NRA	General: Decisions out within 90 days of receipt of final information	None	36 days from date record is closed. Overall proceeding days vary.	15 months (facility proceedings)	BCUC, MPUB, OEB, NSUARB, OPUC and NEB have internal target deadlines	4.6.1
Number of average proceeding days	NRA	Rate applications: <ul style="list-style-type: none"> <li>• Gas – 10-12 days</li> <li>• Auto – 12-14 days</li> <li>• Hydro – 15-20 days</li> </ul>	N/A – varies by application type, complexity, oral vs. written hearing.	NRA	6.3 days for Oral hearings	1-3 days (hearings)	2-3 days	NRA-Not tracked	NRA	BCUC does not track	
Cycle times (application to decisions/orders)	40 days (non-hearing)	<ul style="list-style-type: none"> <li>• Electricity – 8 months</li> <li>• Gas – 5 months</li> <li>• Water – 8-10 months</li> <li>• Auto – 6 months</li> </ul>	See performance metrics above.	NRA	Yes	10, 15, 30, 60 and 90 day writing times (majority are 90 days)	NRA	NRA-Not tracked	NRA	BCUC, MPUB, OEB and NSUARB have cycle time targets and NSUARB is a decision writing target.	
Percentage of proceedings with target deadlines (approx.)	NRA	0%	100%	NRA	100%	95% Compliance	100% - required by law or judge	< 5 percent with statutory deadlines	NRA	OEB, AUC, NSUARB and WSUC have the highest level of	

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										hearings with targets	
Average dispute resolution days	33.5	2	Varies by application type, complexity, oral vs. written hearing.	NRA	N/A	N/A	26	Not tracked			
<b>Compliance:</b>											
Number of compliance audits/reviews in the year by area	337	Centra Gas safety audits are completed annually; Stittco audits are every 3 years; prepaid funeral accounts examined annually	Total of 59 compliance reviews in all categories for last fiscal year (2012-2013).		n/a- Compliance area is currently being developed	Fuel audit of major electric utility done every 2 years		No formal compliance audits. Numerous safety reviews and financial audits conducted through the year by staff.	6 Operation Audits; 1 Financial Audit; 150 Operation Inspections	BCUC has a relatively high level of compliance reviews	
<b>Complaints and Disputes:</b>											
Utilities complaints(#)	762	100	<b>Note - Average of calendar years 2011-2013.</b>  Electricity Distributor: 703 Gas Distributor: 178	NRA	2200 (total)	Complaints (formal) filed: Electricity 22 Natural gas 2 Water 5 Wastewater 2 31	1,298 complaints (total)	Formal Complaints - 15 in 2012; 5 in 2013.  Informal Complaints (2013) - 406 Electric; 129 Natural Gas; 675 Telecom; 41 Water	NRA	BCUC has the third lowest level of complaints	
Gas marketer disputes (#)	447	16	<b>Note - Average of calendar years 2011-2013.</b>  Gas Marketer: 880 Electricity Retailer: 845	NRA	NRA	None	1,824 inquiries (total)	No distinction between disputes and complaints	NRA		
<b>Other Organization Performance Metrics use:</b>											
Metrics used to assess the overall performance of the commission/board	None	<ul style="list-style-type: none"> <li>Budget Statements</li> <li>Financial Statements</li> </ul>	Balanced scorecard in accordance with audited Business Plan results. For example, see Appendix B of:  <a href="http://www.ontarioenergyboard.ca/oeb/ Documents/Corporate">http://www.ontarioenergyboard.ca/oeb/ Documents/Corporate</a>	NRA	Yes over 30 performance measured used in the AUC business plan to track performance against business plan strategies and objectives	<ul style="list-style-type: none"> <li>% of hearing decisions issued within target or legislated number of days</li> <li>% of decisions in relation to interlocutory matters released within 10</li> </ul>	None	Yes	NRA		4.3.1, 4.3.2, 4.4.1 4.6.2.1

Area of Interest	BCUC	Manitoba Public Utilities Board	Ontario Energy Board	Québec – Régie de l'énergie	Alberta Utilities Commission	Nova Scotia Commission (Utility and Review Board)	Washington State Utilities Commission	Oregon Public Utility Commission	National Energy Board	KPMG Observations	Report Discussion Section Reference
			<a href="#">e/OEB Business Plan 2014-2017.pdf</a>			business days of final submission					
Are they reported to Government? Yes or No?	No	Yes	Yes	NRA	Yes, included in the Ministry of Energy business plan	Yes	n/a	Yes	Yes	MPUB, OEB, AUC, OPUC, NSUARB and NEB report performance Government	4.3.1, 4.4.1, 4.6.2.1
Are they made public? Yes or No?	No	Yes	Yes	NRA	Yes	Yes	n/a	Yes	Yes		4.3.1, 4.3.2, 4.6.2.1, 4.7.1
Is feedback sought from Utilities? Yes or No?	No formal or informal feedback sought	Yes	Yes	NRA	Yes	Not on performance metrics	n/a	No/Yes (ETO performance measures)	NRA	MPUB, OEB, AUC, NSUARB, OPUC, NEB seek feedback	4.6.1, 4.6.2.1
If so, if what forum?	N/A	Prior to Board strategic planning in discussions with major utilities prior to receipt of rate applications	Periodic surveys conducted and informal outreach.	NRA	Annual Stakeholder survey is conducted by an independent third party, feedback provided to AUC executive and Commission. The AUC has also had sessions to clarify survey responses and hear directly from those interviewed. The AUC also surveys facilities hearing participants.		n/a	Workshops and comments	n/a	MPUB, AUC, NSUARB, NEB and OPUC forums to receive feedback, including workshops and surveys	4.6.1, 4.6.2.1
<b>Other Non-Numerical Metrics:</b>											
Are there formalized and documented human resources (HR) policies?	Some, still in development	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	All jurisdictions who reported had documented HR policies that were visible to staff	4.6.2
Are such HR policies visible to all staff?	Some	Yes	Yes, Intranet	Yes	Yes- posted on internal portal	Yes	Yes	Yes	Yes		
<b>Applications:</b>											
Are applications screened?	No	Yes, except for major utilities	Yes. For applications reviewed for completeness prior to launching a	NRA	Yes, but not before filing. Applications are filed and then assessed by staff and the panel against filing requirements and completeness. Rarely are	Yes, by Clerks for compliance with filing requirements	NRA	Yes	Yes	MPUB, OEB, AUC, OPUC, NSUARB and NEB screen applications	4.5.4

<i>Area of Interest</i>	<i>BCUC</i>	<i>Manitoba Public Utilities Board</i>	<i>Ontario Energy Board</i>	<i>Québec – Régie de l'énergie</i>	<i>Alberta Utilities Commission</i>	<i>Nova Scotia Commission (Utility and Review Board)</i>	<i>Washington State Utilities Commission</i>	<i>Oregon Public Utility Commission</i>	<i>National Energy Board</i>	<i>KPMG Observations</i>	<i>Report Discussion Section Reference</i>
			proceeding by way of notice		they rejected. Incomplete applications are completed through information requests from the panel to the applicant						

*NRA* – Information is not readily available from the records of the Commission

<sup>1</sup> These BCUC Metrics have been prepared by management without audit, review or verification by KPMG.

## Appendix C – Detailed KPMG Project Steps

In conducting our performance and operational review of the BCUC, KPMG’s review process involved the following four steps, which were based on the Statement of Work issued by, and subsequently confirmed by the Task Force to KPMG.

### Step 1 – Develop an Organizational Framework of a Regulator and also Key Effectiveness Principles of a Regulator to use in our Review and Assessment of the BCUC

KPMG’s first step was to develop its view of a standard organizational framework of a regulator and also develop a list of key principles of an effective regulator. The organizational framework was used throughout this project to provide structure to our research and analysis (e.g. as a basis for internal and external interview guides and data collection templates) and is used in this report to communicate findings. To assess the organizational framework of the BCUC and specifically conduct a performance and operational review, we required assessment principles to identify and describe performance and operational challenges of the BCUC. KPMG performed a literature review to identify key effectiveness principles for both a not-for profit organization and also those specific to a regulator in developing these principles.

Our approach and findings are included in Sections 3.3 and 3.4.

### Step 2 - Review the Organizational Framework of the BCUC and of a Select Group of North American Utility Boards and Commissions, including their Structure, Key Processes, Operational Information and Current Challenges

To understand the structure, key processes, operational information and challenges affecting the performance and operating efficiency and effectiveness of the BCUC, the following procedures were performed by KPMG:

#### *BCUC Desktop Review*

- Performed a desktop review of the structure, key process documentation and operation and performance information available from BCUC’s website and other records provided by BCUC management;

#### *BCUC Interviews*

- To better understand the “as-is” state of BCUC’s strategic and key operational processes and to identify gaps in current process performance and efficiencies and effectiveness, we conducted interviews with Commissioners, the CEO and Chair and also lead staff across all of the following departments of the BCUC:
  - Energy;
  - Infrastructure;
  - Performance, Monitoring, Conduct & Compliance;
  - Policy, Planning & Customer Relations;
  - Rates;
  - Human Resources and Finance;
  - Information Services and Commission Secretary; and
  - Office of the Chair.

Each interview was similarly structured and extended 1-2 hours in length. All Commissioners, including the Chair, were interviewed in one group interview session. The list of interviewees is included in Table 1 below.

All information obtained through Step 2 procedures was not audited, reviewed or verified. As directed by the Task Force, we did not interview external stakeholders as part of this review. KPMG though, did read the consultation summaries of the Task force detailing the results of their interviews with stakeholders.

**Table 1: BCUC Interview Summary**

<b>Department</b>	<b>Position of Interviewee</b>	<b>Interview Date</b>
<b>Staff</b>		
Energy	Director	June 18, 2014
Infrastructure	Acting Director	June 16, 2014
Performance, Monitoring, Conduct & Compliance	Chair and Chief Executive Officer (Director position vacant at this time)	June 20, 2014
Policy, Planning & Customer Relations	Acting Director	June 16, 2014
Rates	Director	June 17, 2014
Information Services and Commission Secretary's Office	Director and Commission Secretary	June 18, 2014
Financial Administration	Director, Human Resources and Finance	June 19, 2014
<b>Executive Officers</b>		
Office of the Chair	Chair and Chief Executive Officer	June 5 and June 20, 2014
<b>Commissioners</b>		
Interview Workshop with BCUC Commissioners	Chair and Commissioner	June 17, 2014
	Commissioners	June 17, 2014

### *BCUC Case Examples*

To support our understanding of BCUC's application processes and its efficiency and effectiveness challenges and successes, we reviewed four historical applications ("Case Examples") which included a review of related decision and action memorandums and the related reasons for decisions and performed a structural 1-2 hour interview of staff and/or Commissioners involved with each proceeding.

Three applications were selected based upon prior knowledge of apparent challenges and/or success (from stakeholder perspectives based upon their discussions with the Task Force and also generally acknowledged by management) in these application processes. One case was selected as it was a Stream-lined Review Process. These cases were approved by the Task Force as being appropriate for their directive.

The context of the case reviews should be noted. They were those applications that included complexity, often requiring reference to new legislation, evolving customer relations, and included emerging market and economic factors. As such there were a number of matters raised through the cases that were specific to those detailed applications. Our approach was to stand-back from the details and ascertain whether the BCUC approach, as a whole, might be made more efficient, given that the average elapsed time from initial application to a decision by the BCUC for the four cases



was approximately 20 months. KPMG did not discuss the details of the case studies with the applicant, the Province or the stakeholders.

The cases reviewed and related interviews included:

<b>Table 2: BCUC Interview Summary</b>	
<b>Case review Interviewee</b>	<b>Date of Interview</b>
Acting Director Policy, Planning & Customer Relations	June 26, 2014
Commissioner	June 23, 2014
Director Energy	June 25, 2014
Director Rates	June 26, 2014

### *BCUC Operational Metrics*

We requested from Management certain operational information metrics (qualitative and quantitative) of the BCUC over the last 1-5 years to assist us in our review and also benchmark against other peer jurisdictional boards/commissions (discussed more below). This information is summarized in Appendix B.

All information obtained through the above procedures was not audited, reviewed or verified. As directed by the Task Force, we have not interviewed stakeholders as part of this review. The Task Force has interviewed stakeholders as set out in its Terms of Reference.

### *Task Force BCUC and Stakeholder Interviews*

The Task Force interviewed various BCUC commissioners, staff and stakeholders to obtain their views on the performance and efficiency and effectiveness of the BCUC. KPMG read the consultation summaries of these interviews with Stakeholders only as part of this project and the Task Force provided a summary of their relevant findings.

### **Select Regulatory Peer Group**

Our report also contains a comparison of the BCUC’s qualitative and quantitative metrics compared to its regulatory peer group in North America to highlight possible operational performance, effectiveness and efficiency matters at the BCUC and also highlight jurisdictions which may have possible related improvement solution alternatives. The Task Force requested that we benchmark BCUC operational metrics against the following peer utility boards and commissions in other North American jurisdictions including the:

- Manitoba Public Utilities Board (“MPUB”)
- Ontario Energy Board (“OEB”)
- Québec Régie de l’énergie (“QRE”)
- Alberta Utilities Commission (“AUC”)
- Nova Scotia Commission (Utility and Review Board) (“NSUARB”)
- Washington (State) Utilities and Transportation Commission (“WSUC”)
- Oregon Public Utility Commission (“OPUC”)
- National Energy Board (“NEB”)

Our procedures to gather benchmarking (qualitative and quantitative) information and general operating and process information from the above listed boards and commissions included:

- Desktop collection of publically available information, including information on their respective websites.
- Participated in structured 1-1.5 hour interviews with certain senior executives at each of the boards and commissions (excluding the Quebec commission). A listing of those interviewed is summarized in Table 3 below.
- Requested that each peer board and commission (excluding the Quebec commission) complete a standard template of qualitative and quantitative information metrics to compare to similar information gathered for the BCUC (under Step 1 procedures in the preceding section).

The Quebec Commission elected not to participate in our interview or template data collection procedures due to their current commitments to their own core review. As a result, we performed a desktop review of available public information only, where information was limited.

**Table 3: Peer Board and Commission Interviews**

<b>Case</b>	<b>Date of Interview</b>
Manitoba Public Utilities Board	June 25, 2014
Ontario Energy Board	July 16, 2014
Alberta Utilities Commission	June & Aug 12 , 2014
Nova Scotia Commission (Utility and Review Board)	July 15, 2014
Washington Utilities and Transportation Commission	June 30, 2014
Oregon Public Utility Commission	June 23, 2014
National Energy Board	July 10, 2014

### Step 3 – Global and Other Alternative Benchmarking Metrics and Processes

The objective of this work was to identify current views on the effectiveness and efficiency of different regulatory process/approaches and their supporting rationale. It was done to identify, if available, accepted alternative practice with respect to implementation that may be appropriate for the Task Force to consider for the BCUC.

Other best practices procedures, benchmarking and of other relevant global jurisdictional comparisons were added from KPMG’s prior knowledge, research and historical interaction with stakeholders, utilities, and other regulators.

This involved a desktop literature review of current academic thinking and practical experience. We reviewed measurements by which efficient regulators are typically judged, papers that consider the theory or principles of efficient regulatory practice, as well as studies that have evaluated the actual effectiveness of regulation in practice. KPMG also accessed and made enquiries of its global Power and Utilities group for any other global best/alternative practices and benchmarks to consider, as well as operational best practices in other jurisdictions outside our prior recognized peer group.

### Step 4 – Review and Analysis of Benchmarking and Other Information and Resulting Considerations and Recommendations to the Task Force

Finally, the above BCUC and benchmarking information identified in Steps 1-3 was reviewed, assessed and analysed to identify performance and efficiency and effectiveness matters at the BCUC. We considered BCUC’s position relative to other regulators in applying leading or alternative practices and suggested possible alternative effective and efficiency procedures and process solutions (used by peer Commissions or other regulators), that may be of interest to the Task Force and BCUC.

Our findings on performance and process efficiency and effectiveness matters and considerations for the Task Force are included in Section 4.

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# 1. Literature Review

In this Chapter, we summarize findings from our literature review that may bear on the issues facing BCUC. Findings are organized into the following topic areas:

- The mandate and role of the regulator.
- Principles of “best practice” regulation.
- Efficiency and effectiveness.
- Risk-based or outcomes-based regulation.

In undertaking our literature review we initially focused on articles that identified best practices for regulatory agencies, particularly utility regulators. As our work evolved, however, we also found some principles and practices for not-for-profit organizations that could be useful in the context of this review. Hence, these findings have also been included herein.

This review is not a complete or comprehensive overview of all of the literature available. Given the extent of writings on these topics, we have not been able to review all of the potential sources and thus may not have identified the most relevant sources. Nevertheless, we have provided a summary of materials that we found particularly relevant or insightful.

## 2. The Mandate and Role of the Regulator

The role of government is typically to establish the overall mandate and policy direction of the regulator.<sup>1</sup> This is generally done through legislation, which also defines the powers that a regulator is given. The regulator then carries out its mandate within the framework provided. The separation of duties inherent in this approach reflects a belief that it is desirable to separate policy making from administration: “In other words, the organisation that makes the laws should not enforce them”.<sup>2</sup>

The distinction between policy making and administration, however, is not always clear. One paper suggests that this ambiguity may be inevitable and then proposes a slightly different approach to thinking about the issue:

“Part of the controversy...is simply that the boundaries between ‘policy-making’ and ‘regulating’ are inherently fluid and uncertain. Moreover, the very notion of distinguishing between ‘policy-making’ and ‘regulating’ may well pose a false dichotomy. Both policy makers and regulators make policy. The distinction is that policy makers define the fundamentals and define the parameters within which policy making is delegated to regulators. It is more useful to think, not in terms of policy making versus regulation, but, rather, as macro policy versus micro policy.”<sup>3</sup>

The author then identifies seven “key concepts” that are useful in distinguishing between macro and micro policy. These are as follows:

- “1. Basic and macro policy must be set by the Government.
- “2. Government policy must be set and altered only on a prospective basis.
- “3. Regulators must follow and enforce policies articulated by the Government
- “4. Regulators are creatures of the state and not necessarily of the Government.
- “5. Policy vacuums are an inherent and to be expected.
- “6. Some policy issues require technical expertise to be resolved.

<sup>1</sup> Conference Board, p. 10.

<sup>2</sup> The Office of Water Regulation (1999), p. 12.

<sup>3</sup> Brown, p. 1.

“7. Regulatory decision making, policy or otherwise must be subject to appellate review.”

Governments must set basic (or macro) policy because “it is its action that vests legitimacy, credibility, and legal authority to the regulatory regime”.<sup>4</sup> However, macro policy should not be overly detailed for two reasons:

- Circumstances may change and regulators need the flexibility to adopt to this change, and
- Some matters are too technical for policy makers. Brown notes that pricing is a good example of such a matter.

Micro policy involves the clarification of broad policy. According to Brown, regulators’ role in setting micro policy generally arises in the context of making decisions on specific cases. It is in this context that issues will arise that were not, and perhaps could not, have been foreseen by the macro policy makers. Brown notes:

“The making of policy by regulators is incidental to and inherent in their duty to decide specific cases or disputes. That policy making role is derived entirely from the fact that macro policy cannot reasonably be expected to anticipate all aspects of policy that will have to evolve for the regulatory process to be fully functional.”<sup>5</sup>

Reasons for not reverting to macro policy makers when such issues arise include the following:

- Timing. Getting guidance from government or legislative authorities may lead to inappropriate delay.
- The risk of politicization. Calling on government authorities to provide guidance on micro policy issues raises the potential for politicization of the outcome of specific cases.

The “essence” of making micro policy is that it “must be carried out independently, transparently, and in an apolitical manner”. To ensure the integrity of regulators’ decision making, the process must be fully transparent. “All parties have the same opportunity to access the decision makers and to know what information and arguments the regulators are considering in rendering their decisions”.<sup>6</sup>

Political authorities can and should have a transparent means of making their views known on specific issues falling under the rubric of micro policy. As Brown notes: “The problem is not the transparent offering of viewpoints, but, rather, the non-transparent bypass of the regulatory processes that seems likely to occur if regulators are not in a position to decide micro policy issues on their own”.<sup>7</sup>

In addition to macro and micro policy making, there is a third “sequence” in deciding regulatory matters. This is an appellate process which encompasses two types of appeals:

- Appeals in which a party that feels aggrieved by a regulator’s decision can seek to have the decision overturned. Such appeals must be reviewed in an independent, transparent and apolitical matter (generally by a Court). Considerations in this type of appeal are generally whether regulators acted within their lawful authority, acted reasonably, and followed fair and correct procedures.
- Appeals to macro policy makers. This allows governments to retain the ability to alter micro policy that has been set by a regulator. Governments should be able to alter policy, however, only on a

<sup>4</sup> Brown, p. 2.

<sup>5</sup> Brown, p. 12.

<sup>6</sup> Brown, p. 9.

<sup>7</sup> Brown, p. 10.

forward looking, or prospective, basis. Otherwise they will effectively undermine the regulatory process.

As identified earlier, there is significant potential for tension to arise between governments and regulators. This tension may increase in an era in which costs are rising rapidly and in which the utility sector is required to address an increasingly broad range of objectives.

One of the key new challenges facing regulators is the desire by many governments to promote renewable generation and other elements of an environmental agenda. This has complicated the regulatory process, since regulators may now have to consider objectives other than simply price and service quality. Since there are necessarily trade-offs among objectives, increasing the number that need to be considered inevitably results in more scope for disagreement regarding the appropriate balance.

The desire to promote a smart grid may also lead to additional challenges. This is notwithstanding the fact that a smart grid could also be viewed simply as a strategy to meet other existing objectives, such as improving reliability or meeting environmental goals (for example, through better demand response or distributed generation).

As the system evolves to meet new challenges, technology innovation may become more important. However, as one study notes:

“Traditional utility regulation has focused more on curbing monopoly power and avoiding excessive costs than on encouraging innovation. This emphasis is being increasingly expensive in an environment with rapid technological change and consequent potential for significant efficiency gains.”<sup>8</sup>

Throughout much of the history of the electricity industry, average costs were falling over time as the result of increasing economies of scale and significant technological improvements in large, central thermal plants. Overall throughput also increased steadily as society electrified and as average real electricity prices fell. This made utility regulation easier, since utilities and consumers benefited both from declining marginal costs and the ability to spread fixed costs over an expanding usage base. As growth in electricity consumption slows, however, cost pressures become even more challenging to address.

### **3. Principles of Best Practice Regulation**

In our review of the literature, we found less emphasis on quantitative measures of the efficiency of regulators than on principles or indicators of good regulator practice. This reflects the belief that the quality of a regulator’s decisions is often both more important than the direct cost of those decisions (in terms of regulatory effort) and also more difficult to evaluate.

For BCUC, this means that the focus should be less on financial metrics of performance, and more on measures of stakeholder satisfaction and on indicators that the quality of decisions is viewed highly.

#### **3.1 The Office of Water Regulation**

The Office of Water Regulation (OWR) in Western Australia prepared a paper on best practices in utility regulation based on consultation with representatives of regulators, utilities, and consumer groups. As this paper is widely quoted and is consistent with other literature that we have reviewed,

<sup>8</sup> MIT, p. 194.

we have expanded on its conclusions here. In particular, this paper identified a number of best practices with respect to the principles, processes and organization of utility regulatory bodies.<sup>9</sup>

The OWR identified nine principles as outlined below. We have added potential strategies or considerations in meeting these objectives in the italicized sub-bullets.:

- **Communication.** Good communication allows stakeholders to understand the rationale for decisions and, further, can inform them of policy objectives and requirements. This can then lead to effective self-regulation. Communication should be “relevant and comprehensive”, “accessible”, “timely”, and “inclusive”.
  - *Generic proceedings or consultation initiatives focused on general issues can assist in clarifying policy objectives and requirements and in facilitating communication. The use of the principles of “plain-language” communication, where possible, can also assist in meeting this objective.*
  - *Press releases and other broad-based communications methods may be appropriate for describing major events and decisions or the outcome of policy initiatives.*
- **Consultation.** The OWR pointed to “effective and early” consultation among regulators, customers and utilities as an essential strategy for ensuring appropriate regulatory frameworks. Consultation helps regulators understand the implications of their actions and to understand and identify all potential alternatives. Consultation also promotes trust and helps to avoid adversarial relationships.
  - *This principle suggests that BCUC should have formal processes for periodic dialogue with stakeholders. These processes should be independent of specific applications, so that discussion can focus on broader issues and on general approaches to regulation and stakeholder management. Consultation processes may also help in achieving consistency, predictability and transparency, which are principles noted further below.*
  - *On-line software can be used to solicit public comments during proceedings, helping to open up the process to ratepayers and other impacted parties.*
- **Consistency.** Consistency captures the idea that the treatment of regulated entities will be consistent across sectors and over time.
  - *Consensus-building methods can be used to ensure that decisions are unanimous to the greatest degree possible.*
- **Predictability.** Utilities can more confidently plan for the future when they can predict regulators’ decisions. The OWR noted that key mechanisms for improving predictability are the establishment of well-defined criteria for making decisions and having clear timelines for review.
- **Flexibility.** Regulators must have knowledge of and be open to alternative regulatory approaches. They must be able to change their regulatory approach as the external environment changes.
  - *BCUC participation in external regulatory associations and courses can provide commissioners and staff with insight on developments in other jurisdictions. This will provide them with the knowledge to keep up-to-date with leading practices and potentially transfer these practices to British Columbia.*
- **Independence.** The concept of independence addresses the ability of a regulator to act independently from undue influences that could compromise regulatory outcomes. The OWR links independence to transparency: an independent regulator will not hide the processes used to reach decisions.
  - *For a regulator, independence can be compromised if senior staff can be removed at the whim of the government, if the agency is dependent on central government processes and systems that are not suitable for its operations, and its decisions are easily over-ruled.*
- **Effectiveness and efficiency.** The assessment of regulation should consider cost effectiveness. Under the general heading of effectiveness and efficiency, the OWR identified four sub-considerations:

<sup>9</sup> The Office of Water Regulation (1999), p. 1.



- Information Requirements. Regulators should collect only the information that is needed for them to carry out their role.
- Time Taken to Make Decisions. Process should be well-defined and structured to eliminate unnecessary delays.
- Staff with appropriate levels of technical knowledge. The regulator requires sufficient technical knowledge so that informed decisions can be made. Without trained staff, a regulator will be dominated by the utilities that it regulates; it will also tend to ask for more information than might otherwise be required to compensate, leading to inefficiencies.
  - *For BCUC, a challenge in gaining staff with appropriate technical knowledge may be the inability to pay sufficient salaries. Public service hiring rules can also limit a regulator’s ability to hire appropriate staff. Hence, this review should ensure that BCUC it is not unduly constrained.*
  - *Staff need to understand how they contribute to the organization, and need to be fully informed of the status of projects and initiatives within the organization.*
- Processes. These should minimize waste and duplication and operate quickly and easily for all parties.
- **Accountability.** Regulators must take responsibility for their actions, and should have clearly defined processes for decision-making. In addition, there should be:
  - Effective appeal mechanisms.
  - Adherence to principles of natural justice and procedural fairness.
  - *As part of the process for reviewing decisions, the Commission could have a legal specialist who can review draft decisions from a litigation perspective to identify points or sections that are not well supported. This can help ensure that decisions are robust and written in a manner that will be upheld by courts if challenged.*
- **Transparency.** Transparency encompasses openness with respect to objectives, processes, data and decisions. Transparency helps gain stakeholders gain confidence in a regulator’s decisions.
  - *Electronic filing systems, and uploading of past decisions and filings, can make it much easier for the public and stakeholders to understand outcomes and supporting data.*

Funding constraints, in particular, may limit a regulator’s ability to live up to the principles noted above, by limiting its ability to consult with stakeholders, to hire appropriate numbers and quality of staff, and by limiting the time spent on improving processes to meet best practice guidelines. To the extent that regulators are funded by the industries that they regulate, rather than out of a government’s general revenues, this may facilitate access to adequate resources. Regulated entities may be willing to contribute additional funding if this can be seen to improve the quality and timeliness of decision-making.

## 3.2 Productivity Commission – Australian Government

As part of an audit framework for regulatory agencies, the Productivity Commission of the Australian government identified a number of high-level principles that it believes are the foundation of good regulator practice.<sup>10</sup> These principles are very consistent with those outlined above, but perhaps more streamlined. The core principles are:

- Clear and effective communication.
- Risk-based and proportionate requirements and assessments.
- Accountable and transparent decisions.

Additional principles are as follows:

- Consistency in decision making, the application of rules, and engagement with clients or stakeholders.

<sup>10</sup> Australian Government Productivity Commission (2014), p. 21.

- A commitment to continuous improvement, including acting on findings in regard to the need for and effectiveness of the regulation.

The Commission believes that these best practice principles minimize the costs of achieving regulatory objectives. They also promote efficiency and effectiveness.

It should be noted, however, that regulator in the context of the paper from the Productivity Commission includes government agencies with regulatory responsibilities generally, and not just utility regulators responsible for economic and rate regulation.

### 3.3 World Bank Views on Independence

A paper by the World Bank suggests that the independence of a regulator can be thought of as resting on three separate components:<sup>1</sup>

- Having an arms-length relationship with stakeholders (regulated firms, ratepayers, and other private interests).
- Having an arm's length relationship with political authorities.
- Having "organizational autonomy". This may include dedicated funding streams and exemption from restrictive civil service salary rules. (This may help the regulator hire the technical staff that it needs to carry out its functions effectively.)

Having a clear understanding of the elements of independence is important when the regulator, as administrator, needs to be autonomous from both the legislative and executive arms of government. A paper by the OECD notes that independence from the political process is likely to be particularly important where:<sup>2</sup>

- The regulator must be seen to be independent in order to maintain public confidence in the objectivity and impartiality of decisions.
- Both government and investor-owned utilities are regulated under the same framework and hence competitive neutrality is appropriate.
- The regulator can have a significant impact on individual interests or stakeholders, and hence its impartiality is important.

According to the OECD, independence is enhanced where:

- Communication from the Executive arm of government occurs in a way that does not compromise actual or perceived independent. Such communication must thus be transparent and in accordance with governing legislation.
- Criteria for the appointment of the regulator's governing body, and for termination of these appointments, are clear and the associated processes are subject to oversight by legislative or judicial bodies.
- Senior regulatory staff members are limited in their ability to move directly to industry following their term.

### 3.4 Principles for Not-For-Profits

The Mission-Based Management Newsletter has identified ten characteristics of successful non-profits.<sup>3</sup> Principles for not-for-profits may represent a useful point of comparison for utility regulators, regulators, since both types of organizations are not focused on a financial bottom line but, rather, on

<sup>1</sup> The World Bank (1997), p. 1.

<sup>2</sup> OECD, p. 8.

<sup>3</sup> Brinkerhoff, .pp. 2 – 3.

more intangible measures of performance. The characteristics identified by the Mission newsletter are as follows:

- A viable mission. This mission must be understandable, supportable, up-to-date and needed.
- Ethical, Accountable and Transparent. The organization must be based on strong values, since accountability and transparency begin from inside the organization.
- A business-like board of directors. This board must keep the organization focused on its mission and decide key issues quickly and effectively.
- A strong, well-educated staff. This results from staff education and training, helps promotes advocacy of the organization's mission, and allows the organization to manage from the bottom-up.
- Embracing technology for mission. Good technology can help serve the mission of the organization.
- Social entrepreneurs. This suggests that organizations take risks to perform their mission.
- A bias for marketing. This means that each interaction that the organization has with outside entities can be viewed as an opportunity to promote the mission.
- Financially empowered. Organizations take the measures necessary to ensure that they have a diversified income stream that allows them to address their mission.
- A vision for where they are going. Vision is outlined in a strategic plan, which encompasses both the process for developing the plan and the document itself.
- A tight set of controls. These ensure that the organization is free to focus on its mission, rather than having to mind the details of its operations.

The Association of Small Foundations provides a number of useful guidelines for not-for-profits with respect to organizational and program development.<sup>1</sup> These include:

- The organization has a strategic plan in place, and this plan is kept up-to-date and used. Staff members reference this plan when talking to stakeholders.
- The organization is able to point to measurable outcomes in reporting on its progress.
- The organization welcomes input from its constituent base and uses this input for continual program improvement.

## 4. Efficiency and Effectiveness

In a discussion on regulatory efficiency and effectiveness, the Conference Board of Canada has noted the following:

“In economic terms, regulatory efficiency measures how effectively the regime induces regulated companies to produce the most efficient output at the lowest possible cost. Effective regulation should allow companies to introduce new technologies and services on a cost-benefit basis and to supply high-quality, reliable service with optimal social benefits.”<sup>2</sup>

It is interesting to note that this discussion of efficiency and effectiveness focuses on the companies being regulated, rather than on the regulator itself.

<sup>1</sup> Association of Small Foundations, p. 4.

<sup>2</sup> Conference Board, p. 4.

The Conference Board does indicate that, “in its narrowest sense”, efficiency can mean the internal organizational- and cost-effectiveness of the regulator. Potential measures of a regulator’s efficiency that were identified by the Conference Board are as follows:

- Number of staff per utility.
- Average number of days to process a case, application or complaint.
- Average cost per case.
- Annual budget, as a percentage of industry revenue.
- Frequency of cases being appealed.
- Frequency of appealed cases overturned.

However, the Conference Board cautions that the process efficiency of a regulator cannot be looked at in isolation. The evaluation of a regulator’s efficiency and effectiveness must take into account other principles associated with best practice, such as communication, consultation, consistency, predictability, flexibility, independence, accountability, transparency, targeting (focused on goals) and proportionality (in proportion to the risk that is at stake).

The Conference Board notes:

“It is much more difficult to objectively measure the quality of regulatory outputs, such as decisions, than it is to set a target for the time period within which a decision should be delivered, for instance.”<sup>1</sup>

The Conference Board goes on to note:

“Because it is easier to measure process performance indicators, they are used more often than qualitative indicators. As a result, there is a danger that the regulator will focus on meeting those targets alone, rather than longer-term objectives. A poor quality-based decision, rendered within the appropriate time frame, might be more detrimental to the regulated industry than a good, quality-based decision that was delivered too late.”<sup>2</sup>

Common strategies to reduce regulatory effort identified by the Conference Board include the following:

- Encouraging the development of settlement agreements, which can avoid the need for a full hearing process.
- The use of Performance Based Regulation (PBR), in which a formulaic approach is used to index rates from one year to the next. This can avoid the need for annual rate reviews. It should be noted that PBR indexing approaches may be introduced primarily for reasons other than reducing regulatory burden. For example, their major rationale is generally that they provide management with enhanced incentive to pursue efficiency improvements, since they decouple rates from costs in the short term. This allows shareholders, if companies can reduce costs, to benefit from enhanced earnings during the period of decoupling. Such incentives may not be present under traditional Cost of Service regulation.
- Standardizing filing requirements and improve filing guidelines for rate cases.
- Other potential process improvements noted by the Conference Board include the following:<sup>3</sup>
  - Removing policy issues from rate hearings and dealing with them through generic proceedings.
  - Removing demand side management issues from annual rate cases and dealing with them separately.

<sup>1</sup> Conference Board, p. 5.

<sup>2</sup> Conference Board, p. 5.

<sup>3</sup> Conference Board, p. 13.

- The use of administrative law judges to deal with process issues, such as motions on filings, or to screen interrogatories.
- Limiting the number of interrogatories from any one party.
- Requiring intervenors to state their position earlier in the process.
- Issuing a decision with reasons to follow, if urgency requires.
- Setting an end date for the release of a decision and work backwards to set a schedule that is strictly enforced, including timely applications.
- Focusing issues lists to deal with priority items for that year.
- Improving cost award and funding processes.
- Implementing performance measures with timelines.<sup>1</sup>

## 5. Risk or Outcomes-Based Regulation

The concept of risk-based or outcome-based regulation has gained increasing favour as a means of reducing regulatory effort and burden. It captures the idea that regulators should focus their efforts on areas of high-risk and on those companies that have a poor track record of compliance. It often also includes the idea that companies should have greater discretion in how to meet particular objectives, allowing regulators to focus on outcomes achieved rather than taking a prescriptive approach and defining the processes and tactics (or “inputs”) that companies must use.

Elements of a risk-based approach can include the following:<sup>2</sup>

- Focusing on areas of high-risk and on businesses or activities that are non-compliant.
- Having a “proportionate” response to instances of non-compliance, with increasing penalties and enforcement activity for businesses that have a poor track record or more substantial evidence of non-compliance.

<sup>1</sup> Note that we have reordered the presentation of suggested process improvements.

<sup>2</sup> Australian Government Productivity Commission, p. 27.

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