



LEONARD F. KELSEY
CHAIR AND CEO
len.kelsey@bcuc.com
web site: <http://www.bcuc.com>

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 47963

VIA EMAIL

bcucreview@gov.bc.ca

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Dear Independent Task Force:

Re: Independent Task Force
Independent Review of the British Columbia Utilities Commission

On April 28, 2014, the British Columbia Ministry of Energy and Mines (Ministry of Energy), the Minister of Justice and the Minister Responsible for Core Review announced the beginning of an independent review of the British Columbia Utilities Commission (Commission) as part of its 10 Year Plan commitment towards keeping energy rates as low as possible, while the British Columbia Hydro and Power Authority (BC Hydro) makes investments to maintain the electrical system and meet growing demand. In various press releases, the British Columbia Provincial Government (Government) indicated that the review of the Commission is in response to concerns raised by customer groups and utilities regarding various regulatory matters.

As part of announcing the Core Review, the Government issued Terms of Reference which focused on a number of aspects of the review. In summary, the review is to consider:

- i) A multi-jurisdictional review and comparison, including possible benchmarks;
- ii) Commission Processes;
- iii) Structural, Resource Needs and Performance; and
- iv) Other matter that may arise.

The Core Review provides an opportunity for the Commission to obtain feedback from various stakeholders and to identify opportunities to enhance the efficiency and effectiveness of the Commission's processes. The Commission is hopeful that with this feedback, the Task Force will be able to provide practical and implementable solutions to various issues faced by the Commission.

The review process planned by the Task Force is extensive and thorough. It involves Task Force multiple meetings with stakeholders and the Commission, a jurisdictional and analytical review by KPMG, a formal submissions processes for interested parties and support from the Ministry of Energy. The Commission recognizes the significant amount of time and resources devoted to this important review and will continue to provide the necessary assistance throughout the process.

As the Commission's operations and application review processes are open and transparent, most information required by the Task Force will already be available to the Panel. Financial and operational information is readily available through the Commission's Annual Reports and historical proceeding information is available online at the website titled "bcuc.com." We will supplement this information through open dialogue with the Task Force and through staff and Commissioner interviews. We will also work directly with KPMG to provide understanding and direction in the regulatory industry, and to provide contact information with various other Commissions and Regulatory Bodies as requested.

Given the voluminous nature of information this process entails, I will not attempt to repeat those details within this filing. However, with the intent of continuous improvement and regulatory efficiency, the issues for which the Commission would benefit from clarity and direction include:

- 1) The consideration and recommendation of changes to the *Utilities Commission Act* to reflect changes in the energy utility sector and Government Policy.
- 2) The governance and administration framework for the Commission that respects public accountability and independence and efficient administration.
- 3) The review of Commission proceeding requirements to identify if there are ways of compressing timelines while maintaining procedural fairness that can withstand administrative legal challenge.
- 4) Following an analysis of the Commission mandate, the Utilities' needs and expectations as well as benchmarking data, the identification of appropriate resourcing requirements of the Commission.
- 5) The ability to attract and retain qualified full and part-time Commissioners.
- 6) A review of the Information Technology requirements of the Commission and an appropriate funding methodology.
- 7) The improvement of regulatory efficiency through the development and implementation of filing guidelines for all common application types. Such guidelines would ensure consistency amongst utilities and filings, allowing the Commission to more efficiently review applications.
- 8) The development of an application filing protocol that ensures information received by the Commission from Utilities is complete, accurate and appropriate.
- 9) The communication of timely and clear Policy direction and, as necessary, by Government.
- 10) As Intervener participation is a critical component of Commission proceedings, it is important that this form of external participation is effective and provides appropriate value for money to stakeholders impacted by Commission decisions.
- 11) The review of the emerging energies marketplace and evaluation of the appropriateness of the Commission's involvement in that competitive environment.

To better understand these issues and their possible solutions, Commission staff continue to be available to the Task Force to discuss these matters in greater detail. As we believe this Core Review represents a rare opportunity, I invite the Task Force to draw from Commission resources as much as needed to ensure the most effective outcome to the Core Review.

In addition, as an Appendix to this document, we have prepared a summary of the changing environment the Commission faces. Further information and details of interest to the Task Force will be made available as requested.

We look forward to further dialogue on this matter and feedback that the Core Review will ultimately provide.

Kind Regards,

A handwritten signature in black ink, appearing to read "Len Kelsey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Len Kelsey

KB/nd
Enclosure

BRITISH COLUMBIA UTILITIES COMMISSION

ADAPTING TO CHANGE

A. Executive Summary

Since 2000, the British Columbia Utilities Commission (BCUC, Commission) has experienced significant growth in the scope of its mandate. These new responsibilities are primarily the result of policy and legislation introduced by British Columbia's Provincial Government (Government).

In the last decade, Government initiatives in clean energy, carbon footprint reduction and conservation have resulted in an unprecedented expansion of applications and issues presented to the Commission. The reintroduction of regulation at the British Columbia Hydro and Power Authority (BC Hydro) after an extended period of rate freeze also came with a significant growth of Commission duties. The responsibility to regulate certain aspects of the Insurance Corporation of British Columbia (ICBC) during this time, including ICBC's rate design and revenue requirements, further diversified the role of the Commission. Government initiatives such as the Customer Choice program, which allows certain low volume natural gas customers to choose their gas commodity provider; the introduction of the Mandatory Reliability Standards (MRS) program, which is designed to bring security and stability to the electrical delivery network; and the introduction of smart meter technology have all added complexity and resource constraint challenging the Commission's deliverable-oriented relationship with regulated utilities.

In addition to Government initiatives, the mandate is further expanded by other factors such as the rising complexity and public interest involved in the review of traditional utility regulation as utilities are pursuing more progressive and responsive energy initiatives. Further, direction from the Courts regarding the Commission's duties to assess the Crown's First Nation consultations have become a routine, yet complex, step in the course of proceedings involving capital projects.

The aforementioned is not an exhaustive list of the factors that the Commission, and most other regulatory agencies in the energy and environment sector, are facing in terms of change. With these increased responsibilities as described, the Commission required an increase in staffing levels and costs related to part-time Commissioners, consultants and Interveners. However, the Commission also faces tension between managing its growing responsibilities and financial constraint, particularly in light of recent government fiscal policies. This has driven a number of efficiency measures in Commission operations; however the result of this tension can also be observed in extended timelines on some Commission proceedings - an undesirable, yet unavoidable, outcome.

Beyond human resource constraints, the Commission faces internal challenges to balance growth in complexity, work volume growth, fiscal prudence and, at the same time, plan and undertake initiatives that move the Commission's operations forward.

This document is intended to provide context to understand the Commission's operating environment. That context is important when seeking out opportunities for efficiencies and streamlining processes. There are a

number of matters of concern to the Commission which would benefit from study and response. This document does not attempt to capture those matters as it is purely a reflection on the Commission and its recent history. Information on the Commission's performance is readily available in the Commission's Annual Reports and through its transparent proceeding records. All this information can be found on the Commission's website at bcuc.com. Through dialogue and specific information requests, the Commission will provide information and support to better understand the challenges and opportunities for increased efficiency and effectiveness of the Commission.

B. Introduction to the Commission

The Commission is a regulatory agency of the Provincial Government, operating under and administering the *Utilities Commission Act (UCA)*. The Commission's primary responsibility is the regulation of British Columbia's natural gas and electricity utilities. The Commission also regulates intra-provincial pipelines and universal compulsory automobile insurance. Currently, the Commission regulates approximately 28 utilities, as compared to 25 in 2001, and licences 10 gas marketers under the Customer Choice program, for which it oversees the general program through maintaining the Code of Conduct and conducting Compliance related matters. Additionally, the Commission administers 39 registered entities under the Mandatory Reliability Standards programs. The Customer Choice program, the Mandatory Reliability Standards program and auto insurance regulation were not within the Commission mandate in 2001. The Commission has been self-funded since 1988. Its costs are recovered primarily through a levy on the public utilities it regulates.

The Commission's function is quasi-judicial and it has the power to make legally binding rulings. Decisions and orders of the Commission may be appealed to the Court of Appeal on questions of law or jurisdiction. The Commission's primary responsibility is the regulation of the public utilities under its jurisdiction and the regulation of certain aspects of automobile insurance pursuant to the *Insurance Corporation Amendment Act*. The *Administrative Tribunals Act*, and the *Freedom of Information and Protection of Privacy Act* also apply to matters before the Commission. Additionally, the Commission is subject to oversight by the Provincial Office of the Ombudsman.

The Commission is organized into seven groups: two administrative, four regulatory and one compliance. The Commission generally begins proceedings in response to the receipt of an application. However, the Commission can begin a proceeding, usually referred to as an Inquiry, on its own accord. While proceedings must follow principles of natural justice to ensure procedural fairness, the Commission has a number of procedural tools available to administer this process. Typically, an oral hearing or written hearing is held, although, a number of specialized processes are available and are becoming more commonly used. These include the Streamlined Review Process and Negotiated Settlements.

In 2011, the Commission introduced the Streamlined Review Process to expedite proceedings on relatively simple, isolated matters. This process has been successfully applied to a number of applications since then, resulting in compressed timetables and expedited decision-making.

The Negotiated Settlement Process is commonly used for revenue requirement proceedings. This process allows stakeholders to draw up a settlement agreement in confidence, with Commission staff involvement. This agreement is then presented to the Commission who must accept or reject it. This process requires broad representation from various impacted stakeholders in order to be appropriate and effective. Refreshed guidelines have recently been established to ensure this is achieved.

In any proceeding, the Commission Panel selects the appropriate proceeding method based on the matter before the Commission while being mindful of regulatory efficiency and respect for fair and defensible process.

C. External Trends Driving Change

Historically, the Commission's role was one of traditional regulation. Matters before the Commission included standard revenue requirements applications, requests for certificates of public convenience and necessity as well as the occasional inquiry, debt modification or restructuring application. However, since 2001, the Commission's mandate has grown to incorporate many new and complex matters.

An overview of these key items are included below.

BC Hydro:

In November 2002, the Provincial Government issued a new energy policy, "Energy For Our Future: A Plan For BC." The four cornerstones of the policy are: low electricity rates and public ownership of BC Hydro, secure reliable supply, more private sector opportunities, and environmental responsibility and no nuclear power sources. Sixteen of the 26 policy actions involve the Commission, including the strengthening of the Commission's mandate and the re-regulation of BC Hydro.

As a result, a BC Hydro rate freeze ended on March 31, 2003 and for Fiscal 2004 and onwards, the Province gave the Commission new mandates associated with restructuring electricity, and reviewing utility resource acquisition plans. The Commission was then tasked with the challenge to bring British Columbia Transmission Corporation (BCTC) and BC Hydro into regulation.

As BC Hydro and BCTC were both Crown Corporations, traditional utilities, and had been regulated in the past, the task of reintegrating these entities into BCUC process occurred relatively quickly. Some adjustments were made to Commission staffing at the time to accommodate this change.

ICBC:

ICBC, a Crown Corporation, is the sole provider of mandatory auto insurance in British Columbia. Up to 2003, ICBC received direction on rates from the Provincial Government. From 2004 onwards, the Provincial Government appointed the Commission as the regulator for Basic insurance rates. The Commission holds regular revenue requirement hearings and occasional rate design proceedings for ICBC.

The regulation of ICBC requires some expansion of the skill set for traditional utility regulation. ICBC requires significant actuarial analysis, investment portfolio understanding and automobile risk evaluation.

The Commission acquired the competence level related to auto insurance with a combination of in-house professional staff (with specialized supplemental training) and the use of expert consultants to fulfill this mandate.

Customer Choice:

As a result of the 2002 Energy Plan, the implemented Commodity Unbundling Service for commercial customers became effective November 1, 2004 and residential customers commencing November 2007. As required by Government legislation, in 2007, the Customer Choice program was introduced to allow certain low volume gas customers (residential and low-volume commercial) the option to choose their natural gas commodity supplier. Under the program, natural gas marketers wishing to sell their commodity to eligible BC customers require an annual marketing licence from the Commission.

With the introduction of the Customer Choice Program, the Commission was tasked with developing codes of conduct, rules and procedures, and implementing and ultimately overseeing the conduct of the program. The Commission is responsible for approving annual licences for all gas marketers, administering gas marketer complaints and disputed contracts, and conducting any customer choice inquiry proceedings that may arise.

In 2012, the Commission licenced 13 Gas Marketers, compared to 15 in 2010 and 16 when the program was first introduced in 2007. By March 2008, 93,000 customers enrolled in the program. At December 31, 2012, 59,717 customers were enrolled in the program.

Customer complaints and disputes related to the Customer Choice program require careful and stringent review to ensure integrity of contracts and to resolve within the specific jurisdiction of the Commission. Each dispute must be adjudicated and requires a written decision from a Commissioner. A Commissioner is assigned to reviewing these items, amongst other duties. As a new program, Customer Choice complaints and disputes resulted in a significant increase in administrative, processing, project management and adjudication duties of the Commission. Over time, the volume of these items reduced substantially to a more reasonable level but continue to require dedicated resources.

The Commission has also held recent inquiries into the activities of two gas marketers and prior to these the Commission undertook routine audits of the program, and of several other gas marketers. This type of regulatory oversight is unique in comparison to the Commission's typical oversight of companies because of the door-to-door sales aspect, which results in a lack of firm evidence in the course of a standard complaint or dispute. These Inquiries are complex undertakings that require a significant amount of resources and expertise and have stretched outside of the traditional skill set of the Commission at times. To address this challenge, specialized consultants, such as forensic examiners, are engaged as needed.

Mandatory Reliability Standards:

Following the 2003 blackout in the eastern part of the continent, governments have taken steps to provide reliability standards for the bulk electrical power system in North America that are mandatory and enforceable. The 2008 amendment to the *Utilities Commission Act* recognizes the North American Electric Reliability Corporation and the Western Electricity Coordinating Council (WECC) as reliability standard-making bodies for the bulk electrical power system, and gives the Commission jurisdiction to determine whether a reliability standard should be adopted in British Columbia. A Ministerial Order in 2009 made a Mandatory Reliability Standards (MRS) Regulation, which prescribes the parties that are subject to adopted reliability standards.

In 2010, the Commission engaged a part time MRS administrator to coordinate the administration of the Commission's MRS responsibilities. This position coordinates with various parties impacted by MRS, including WECC, and also is responsible for the drafting of Commission documents (letters, orders, and staff memos) related to the program. In addition, the Commission uses consultants to evaluate technical matters related to MRS oversight.

In 2012, the Commission undertook an inquiry into MRS. That inquiry assisted the Commission in carrying out its future MRS duties in an efficient and practical manner as the program continues to evolve. As a result of that inquiry, the Commission made recommendations to the Provincial Government that could result in changes to Government regulations or legislation.

First Nations:

In February 2009, the British Columbia Court of Appeal delivered its decisions in the Carrier Sekani Tribal Council and Kwikwetlem First Nation matters. These decisions clarified that the Commission's jurisdiction to assess the adequacy of Crown consultation with First Nations was within the Commission's purview.

As a result, the Commission must evaluate the sufficiency and appropriateness of First Nations consultations carried out by BC Hydro in regulatory matters such as applications for new capital projects and capital expenditures. Prior to these court decisions, the scope of the Commission's regulation did not typically involve technical assessments of the Crown's consultation requirements.

To address this change, the Commission embarked on the development of the necessary Guidelines, assessment processes and tools to enable it to properly carry out its responsibilities in this area. From a staffing perspective, the Commission initially seconded a First Nation's specialist from the British Columbia Environmental Assessment Office to develop and implement First Nation's oversight. Upon completion of this secondment, in 2010, the Commission hired a permanent staff professional to address this expanded mandate. The Commission has also relied heavily on external legal advice in these matters.

Provincial Government Environmental Energy Policy:

Following the 2002 Energy Plan, Government released its 2007 Energy Plan: “A Vision for Clean Energy Leadership.” This plan, building on concepts of the 2002 Energy Plan, identified policy actions in the areas of energy conservation and efficiency, electricity, alternative energy and oil and gas. To implement several of the policy actions, Bill 15 amended the UCA to broaden the mandate of the Commission and provide directions to the Commission and public utilities.

Subsequent to the 2007 Energy Plan, the Provincial Government enacted Bill 17, the *Clean Energy Act*, in June 2010 which, amongst other things, reinforced a number of items within the 2007 Energy Plan, exempted certain projects from requiring regulatory approvals and provided further direction on reducing energy consumption and the carbon footprint of the province.

The 2002 & 2007 Energy Plans and 2010 *Clean Energy Act* have had profound impacts on the energy industry and the Commission in a number of areas. The Commission frequently hears applications for projects specifically designed to meet objectives of these documents.

Demand Side Management (DSM)/Energy Efficiency and Conservation (EEC) have become a predominate regulatory matter resulting from Government policy. DSM/EEC funding has grown from initial levels to become significant, complex expenditures over time.

More recently, Government encouraged programs related to alternative, non-traditional and thermal energy. The Commission is experiencing a growing volume of applications for district energy systems, natural gas vehicles, biomethane, Liquefied Natural Gas (LNG)/Compressed Natural Gas (CNG) gas supply and infrastructure. Since their introduction, applications for these non-traditional utility activities have increased exponentially and the industry shows potential for enormous further growth.

Details of each of these items are discussed in more detail below.

Demand Side Management:

In response to government policy, Demand Side Management (DSM) and Energy Efficiency and Conservation (EEC) programs were first introduced by BC Hydro in 1989. The program was significantly downsized in 1995-1998 and it remained so until 2001 when BC Hydro re-launched what is now referred to as *Power Smart 2*. From 1996 to 2003, these programs were not subject to review by the Commission. Small programs were also introduced at legacy utilities that would ultimately become the FortisBC Utilities.

Expenditure schedules for DSM/EEC were traditionally included in resource planning documents filed with the Commission. Initial programs and associated costs were relatively small in scale and simplistic in nature. Plans attempted to introduce the concept of energy conservation to its consumers. Initial approvals required minimal review and were not complex.

Over time, the size and complexity of the utilities' DSM/EEC requests continued to grow. By 2012, DSM/EEC funding requests became material and significant costs were being incurred by the large regulated utilities in British Columbia. Components of DSM/EEC expenditures have become more complicated, advanced and unique as the utilities strive to be innovative at encouraging conservation.

In 2010, the Commission developed in-house professional expertise to address DSM/EEC. The Commission also placed a heavy reliance on specially-trained expert consultants to review DSM/EEC applications. Due to the growing size of this work, its recurring nature and its speciality skill requirements, the Commission has recently increased its staff levels to address DSM/EEC. The Commission also continues to use expert consultants as needed to address complex, new innovations as they are introduced in British Columbia by the Utilities.

Non-Traditional Energy:

In response to Provincial Government Policy, alternative energy programs have been a new area of significant growth. The growth is visible at the Commission in two distinct categories: firstly, within traditional utility activity and also through non-traditional energy offerings including district energy systems.

Non-Traditional Energy Projects:

Initially, growth in such projects was limited. In 2009, the Commission received applications for approval of treatment for certain natural gas vehicle program costs and alternative energy costs incurred within traditionally utilities. In 2011, the Commission received an application for approval to offer traditional natural gas customers the opportunity to pay a premium for biomethane and to introduce it to the traditional gas distribution system. Applications for LNG, CNG and Thermal Energy Services (TES) offerings were made shortly thereafter. Application levels for non-traditional energy offerings continue to grow today.

In May 2011, the Commission established an Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives. Technologies under review in the inquiry included geoexchange, solar thermal and district energy systems, natural gas vehicles and biomethane. That inquiry set the course towards separating certain alternative energy activities from those of traditional utilities. A further inquiry into Biomethane energy was held by the Commission in 2012.

District Energy System Applications:

In addition to the non-traditional energy applications made by traditional utilities, other parties have begun to file applications with the Commission related to district energy systems. The first was received in 2008 when Dockside Green Energy LLP applied to the Commission for approval of a CPCN to construct and operate a District Energy System for Dockside Green Project in Victoria, British Columbia.

Based on the Commission's decision in the AES Inquiry discussed above, district energy systems are regulated utilities unless exempted elsewhere under the UCA. Given that finding, the Commission has seen and will

continue to see an ever growing number of applications from similar energy providers all over the province as these projects gain popularity.

This growth in non-traditional energy applications as well as district energy system projects has significantly increased the work of the Commission

Future Non-traditional Energy Matters:

In late 2012, the Commission issued its Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives. In that report, the Commission found that thermal energy services are regulated under the UCA but that the market conditions and monopoly characteristics of some of these systems warrant light-handed forms of regulation such as exemptions, regulation by complaint or market-based pricing. A number of TES already exist in British Columbia and there are plans to increase the number of these systems substantially, resulting in a sizeable increase in the number of regulated entities in British Columbia.

The existing TES entities have already begun to strain existing Commission resources. A dramatic increase in TES applications and resulting rates, compliance and complaints matters will pose future challenge to the Commission if the current, traditional regulatory framework is applied. To address this serious and timely matter, the Commission initiated a TES proceeding to develop a specialized regulatory framework to best address TES utilities in an efficient and effective manner. Following the proceeding, a proposal is before Government to approve an exemption from active regulation for certain thermal energy projects.

D. Other Unique Applications

In addition to its changing mandate, the Commission has seen growth of infrequent, unique proceedings. This increase is partially driven by the growing complexity of traditional utilities, a number of procedural matters, special inquires and proceedings to address Government policy. Such inquiries were rare in the early 2000's.

Notable was the Section 5 inquiry into British Columbia's Long-Term Transmission Infrastructure. This Proceeding was terminated in 2010. Prior to the termination, the Commission commenced a hearing, as required under Section 5 of the UCA, which directed the Commission to conduct an inquiry with respect to British Columbia's long-term infrastructure for electricity transmission, and to begin the inquiry by March 31, 2009. The Government specified terms of reference for the Inquiry on December 11, 2008. Government suspended the Inquiry pending its consideration and policy response to the Green Energy Task Force Groups.

Prior to suspension of the Section 5 Inquiry, the Commission incurred significant costs in areas such as consultant and Intervener costs.

Another example is the recent Cost of Capital proceedings.

Conclusion

The Commission is a growing and changing organization faced with the challenge of an expanding mandate. These changes are largely driven by government policy with a focus on alternative and clean energy and the related response of the utilities and the public. The Commission is not alone as other provincial and state regulators are also addressing similar challenges across North America. Over the past decade, the Commission has strived to adapt to these changes and fulfill its mandate in a fiscally responsible way, while acting in accordance with the administrative and quasi-judicial framework under which it must operate.

We acknowledge and respect the government's priorities around fiscal responsibility and resource constraint within its Crown Corporations, and we look forward to the guidance we will receive in determining the appropriate balance between this mandate while meeting the needs of the public and regulated utilities as a responsible administrative tribunal in British Columbia.