

MINISTRY OF ENERGY AND MINES
BRIEFING NOTE FOR INFORMATION

- I PREPARED FOR:** Honourable Bill Bennett, Minister of Energy and Mines
- II ISSUE:** Meeting with Peter Ostergaard, Michael Costello and Brian Wallace, Q.C., regarding the Independent Review of the British Columbia Utilities Commission Final Report
- III BACKGROUND:**

During the 2013 Industrial Electricity Policy Review (IEPR), customer groups and utilities frequently raised concerns about the British Columbia Utilities Commission's (BCUC's) effectiveness and efficiency. As a result, the IEPR Task Force recommended an independent review of the BCUC to evaluate resource needs, review processes, and performance.

Government announced in the November 2013 10 Year Rates Plan for BC Hydro that they would be initiating a Core Review of the BCUC, to be led by an independent Task Force that would make recommendations on how to improve the BCUC's effectiveness and efficiency. The Task Force Terms of Reference were announced in April 2014 (Terms of Reference enclosed as Appendix #1). A Task Force comprising Peter Ostergaard (Chair), Michael Costello, and Brian Wallace, Q.C., were announced as undertaking the independent review.

The Terms of Reference for the review requests the Task Force review, evaluate, and make recommendations on:

- Other jurisdictions' regulatory models and key benchmarks;
- BCUC processes;
- BCUC's structure, resource needs, and performance; and
- In consultation with Ministers, any other matters that were considered significant.

In mid-July 2014, the Minister of Energy and Mines asked the Task Force to investigate the potential efficiencies that could be gained from BCUC regulation of private sector water utilities, and four issues arising from the current regulatory model governing the relationship between the Province and the BCUC.

The Task Force held over 40 meetings and conference calls with 25 stakeholder groups, and received 43 submissions over four phases of consultation. A final consultation summary has been posted online. KPMG was also retained to complete a jurisdictional scan and suggest improvements to the BCUC.

Following the October 1, 2014 meeting regarding the Task Force's draft Interim Report, the final Interim Report was posted on October 8, 2014 for stakeholder comment. The stakeholder comment period ended on Oct 29, 2014, and the Task Force received six formal responses. There was general support for the Interim Report with some specific and detailed comments and suggestions received.

The Task Force has taken the comments under consideration and submitted their Final Report to the Minister of Energy and Mines and Minister responsible for Core Review and the Attorney General and Minister of Justice on November 12, 2014, prior to the November 17, 2014 due date, as per its Terms of Reference. The Task Force's Final Report is largely the same as the

Interim Report posted for stakeholder review with the exception that recommendations have been included.

IV DISCUSSION:

The Task Force's Final Report is organized into four broad categories:

- Governance: topics affecting the BCUC that are largely established by the Province, mostly through the policy and legislative framework under which the BCUC must operate.
- BCUC Processes: topics that are mostly within the BCUC's control as a quasi-independent administrative tribunal, including the ways it manages its proceedings.
- BCUC Structure, Organization, and Performance: topics largely associated with the BCUC's management of itself, including capacity, resource needs, and organizational efficiency and effectiveness.
- Other Matters: a different regulatory approach for BC Hydro, the potential efficiencies gained from BCUC regulation of private water utilities, perspectives on the unique regulatory treatment of the Insurance Corporation of British Columbia, and public communications.

Under the four categories, the Task Force has made a total of 35 recommendations. In comparison to the Interim Report discussed with the Minister of Energy and Mines on October 1, 2014, one recommendation with respect to Mandatory Reliability Standards was removed based on FortisBC and BC Hydro comments on the Interim Report.

Recommendations with respect to the independence of the BCUC continue to be of note. The Task Force explicitly recognizes government's prerogative to establish the BCUC's mandate, set the Province's broad energy policy framework and to direct the BCUC on specific matters via section 3 of the *Utilities Commission Act*. The Task Force recommends that government clarify the way in which policy is currently communicated, and suggests that government consider updating both the Energy Plan and the *Clean Energy Act* to ensure they are consistent with current policies. The Task Force also suggests that government should make more use of *Utilities Commission Act* section 5 inquiries to receive BCUC input into government decision-making processes with respect to BC Hydro projects and plans.

Also of note is the Task Force recommendation to increase remuneration for both Commissioners and BCUC staff as well as improving the Commissioner recruitment process in order to enhance the BCUC's credibility and ensure solid decision making. The Task Force noted that the BCUC is self-funded, and that those who pay, utilities and their customers, supported these recommendations. The Task Force also made a number of recommendations with regards to the BCUC's organizational structure and its processes.

Attached in Appendix #2 for your consideration is a draft Government Response to the Task Force's Final Report for each of the 35 recommendations. In general, the draft Government Response accepts recommendations specific to the BCUC. For government related recommendations, the Response either accepts or commits to considering the recommendations. Key responses proposed in the draft include:

- Government will work to ensure that policy is sufficiently clear when issuing directions
- An affirmation that it is government's role to set energy policy and there are circumstances where specific direction to the BCUC is appropriate;
- Government and the BCUC will develop a memorandum of understanding to establish clear roles and responsibilities ;

- Government will consider recommendations with respect to legislative changes for inclusion in the Spring 2016 legislative session;
- Government will work with BCUC to develop options around staff retention, executive compensation and Commissioner hiring practices;
- Government will request that the BCUC provide a publically available implementation plan for some of the recommendations (request is suggested to be sent from the Minister Responsible for Core Review in a formal letter); and
- Government will consider using the *Utilities Commission Act* Section 5 when appropriate.

The BCUC Review Task Force Report is scheduled to go forward to the Cabinet Working Group on Core Review on November 26, 2014 for discussion. It is currently at the Minister's discretion as to when the report and a government response (if any) will be released.

V CONCLUSION:

- The Task Force's Final Report includes evaluations and/or recommendations aligning with the requests contained in the Independent Review of the BCUC Review Terms of Reference and the mid-July Minister's letter.
- Most Task Force recommendations do not require legislative or regulatory changes.
- The Task Force's recommendations should ensure that a more robust BCUC may resume the regulation of BC Hydro rates in 2016/17, as committed by government in the 10 Year Rates Plan for BC Hydro.
- It is at the Minister's discretion as to when the final report will be released.

DRAFTED BY:

Scott Cutler
250-952-0706

APPROVED BY:

Chris Trumpy, Dir, EAED ✓
Paul Wieringa, ED, EAED ✓
Les MacLaren, ADM, EAED ✓
Dave Nikolejsin, DM ✓

TERMS OF REFERENCE

INDEPENDENT REVIEW OF THE BRITISH COLUMBIA UTILITIES COMMISSION

Background

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

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

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

Independent Task Force

The Minister of Justice and the Minister Responsible for Core Review hereby authorize a Review of the BCUC as set out in these Terms of Reference.

Further, the Minister Responsible for Core Review appoints a Task Force consisting of three members to implement the Review:

- Michael Costello
- Peter Ostergaard
- Brian Wallace

Scope

The Task Force will review, evaluate and make recommendations respecting the following:

1. A review of comparable utility regulators and models in other jurisdictions, along with key benchmarks.
2. BCUC processes:
 - a. Existing levy funding model and possible alternatives;
 - b. Timeliness, effectiveness, efficiency and cost of reviews;
 - c. Standing/funding for interveners;
 - d. Review processes:
 - d.i. Conventional oral and written public hearings;
 - d.ii. Alternative review processes, including expedited hearing processes and negotiated settlement processes;
 - d.iii. Involvement of the BCUC in alternative regulatory processes;
 - d.iv. Generic proceedings on specific issues that apply to more than one utility;
 - d.v. Opportunities to make hearing processes more efficient and more focused;
 - d.vi. The role, effectiveness and use of guidelines and policies;
 - d.vii. Application cycle (turnaround) times and establishing timelines for reviews and decisions; and
 - d.viii. Coordinated regulatory processes.
3. Structure, resource needs and performance of the BCUC (including but not limited to):
 - a. Review the use of stakeholder representation models in other jurisdictions and implications on the role of staff;
 - b. Recruitment, retention and compensation of BCUC staff and Commissioners, and staffing levels;
 - c. Organizational structure and BCUC composition, including:
 - c.i. Potential Vice-Chair and Executive Director positions;
 - c.ii. Full-time versus part-time Commissioners;
 - c.iii. Experience and knowledge;
 - c.iv. The need for regulatory process and utility expertise; and
 - c.v. Use of BCUC Counsel.
 - d. Efficiency (value for money) and effectiveness of operations and performance, including:
 - d.i. Identify standard (reported) performance measures to be reviewed or recommend measures to be developed;
 - d.ii. Identify operational impediments; and
 - d.iii. Identify specific opportunities for improvements.

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

Task Force Operations and Procedures

The Task Force will solicit input from stakeholders with an interest in the BCUC, including regulated utilities, interveners and current and former BCUC staff and Commissioners. While the Task Force has discretion over how it chooses to engage stakeholders, a consultation record is to be kept and will be made public unless input is explicitly requested to be kept confidential.

The Task Force will have access to technical expertise from the Ministry of Energy and Mines, and has the discretion to create any consultative bodies and/or retain independent technical advice it deems necessary to ensure it receives the information it requires to meet the objectives set out in these Terms of Reference, subject to available budget.

Reporting

The Task Force will report back to the Minister of Justice and the Minister Responsible for Core Review with the following:

1. A summary of consultations with stakeholders on matters contained in these Terms of Reference;
2. A summary of submissions from stakeholders;
3. An interim Report, due October 1, 2014; and
4. A final Report, due November 17, 2014, including suggestions for legislative and regulatory amendments.

Secretariat Support

The Ministry of Energy and Mines will provide secretariat support to the Task Force.

Task Force Recommendations: Governance	Government Response
Independence of the BCUC	
1. Government's policy objectives and directives should be clear and understandable to ensure policy alignment by the Commission.	Government will work with the BCUC to develop a memorandum of understanding that will ensure there are appropriate processes, and clear roles and responsibilities between the Province and the BCUC.
2. When issuing directions to the Commission, the Task Force recommends the following guidelines: <ul style="list-style-type: none"> • Directions should not dictate specific outcomes or intrude into the BCUC's consideration of individual applications; • Directions should be timely and issued before proceedings begin; and • Policy statements are not necessarily legally binding; where a policy is to be mandated it should be made in a legally effective way, such as a direction under section 3 of the <i>Utilities Commission Act</i>. 	It is government's role to set energy policy, and there may be circumstances where specific direction is appropriate. However, in setting energy policy, government will work to ensure that it is sufficiently clear.
3. Government should consider updating both the Energy Plan and the <i>Clean Energy Act</i> to ensure they are consistent with current government policies.	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.
Legislative Framework	
4. The <i>Utilities Commission Act</i> should be amended to clarify the Commission's ability to forebear, or decline to regulate, in specified circumstances.	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.
5. Amendments to the definition of "public utility" should be considered to exempt services and facilities where Commission regulation is not warranted.	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.
6. The existing exemption processes should be streamlined by requiring a Minister's Regulation for all exemption proposals, rather than Cabinet approval for some.	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.
7. Government should review and amend the energy objectives in the <i>Clean Energy Act</i> to reduce conflicts among them, and between them and the <i>Utilities Commission Act</i> .	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.
8. The requirement, unique to BC Hydro, in the <i>Utilities Commission Act</i> that the Commission "must consider and be guided by" the <i>Clean</i>	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.

<i>Energy Act</i> energy objectives should be changed to a requirement that the Commission “must consider” the energy objectives, just as it does for all other utilities.	
Commissioners	
9. The recruitment process for the Commission needs to be changed dramatically. Higher compensation must be offered and the Chair must be actively involved in recruiting candidates with recognized expertise that meets the needs of the Commission at the time of hiring.	The Ministry of Energy and Mines and Board Resourcing and Development Office (BRDO) and the Public Sector Employers' Council (PSEC) will work with the BCUC Chair to develop options to improve the recruitment process of BCUC Commissioners.
10. Two full time Commissioners, in addition to the Chair, with recognized and relevant expertise, should be added as soon as possible.	The Ministry of Energy and Mines and BRDO will work with the BCUC Chair to develop options to improve the recruitment process of BCUC Commissioners.
11. The number of part time Commissioners should be reduced to the point they approximate the number of full time Commissioners.	The Ministry of Energy and Mines and BRDO will work with the BCUC Chair to develop options to improve the recruitment process of BCUC Commissioners.
Staff Remuneration	
12. Government should continue to approve BCUC’s compensation framework but increase compensation levels in line with market levels so the Commission is competitive in recruiting and retaining qualified individuals.	The Ministry of Energy and Mines, BRDO and PSEC will work with the BCUC Chair to develop options to improve the BCUC’s ability to recruit and retain staff.
Task Force Recommendations: Process	
Guidelines and Policies	
13. The BCUC should periodically review existing guidelines and policies to ensure they remain useful, effective and up to date. In particular, the Commission should improve or issue minimum content guidelines for common applications such as facility and revenue requirement applications.	Government accepts this recommendation and will request that the BCUC address this recommendation in a publically available implementation plan.
Scoping or Defining Issues in Proceedings	
14. The Commission should work with applicants and stakeholders early in a hearing process to define the issues in the proceeding.	Government accepts this recommendation and will request that the BCUC address this recommendation in a publically available implementation plan.

Information Requests	
15. All proposed information requests from BCUC staff and consultants should be reviewed by senior staff, by legal counsel, and possibly the Panel.	Government accepts this recommendation and requests that the BCUC implement it.
Intervener Participation	
16. The BCUC should formalize its policies on granting intervener status and publish them.	Government accepts this recommendation and requests that the BCUC implement it.
17. Government should not establish an independent consumer advocate.	Government accepts this recommendation.
18. Participant Assistance/Cost Award Guideline per diem rates and interim award policies should be reviewed.	Government accepts this recommendation and will request that the BCUC address this recommendation in a publically available implementation plan.
19. When appropriate, the BCUC should use its authority under section 116 of the <i>Utilities Commission Act</i> to retain counsel to act on behalf of underrepresented interests.	Government accepts this recommendation and requests that the BCUC implement this recommendation.
20. Section 116 of the <i>Utilities Commission Act</i> should be amended to remove the need for the Attorney General's approval when the Commission hires counsel to represent underrepresented interests.	Government will consider this recommendation as part of its planning for the spring 2016 legislative session.
Application Cycle (Turnaround) Times	
21. The BCUC should develop performance targets for key application cycle times and report on them annually.	Government accepts this recommendation and will request that the BCUC address this recommendation in a publically available implementation plan.
Compliance and Reporting	
22. The BCUC should make additional efforts to ensure all compliance reports are necessary and useful, and eliminate the reporting requirement for those that are not.	Government accepts this recommendation and requests that the BCUC implements it.
23. The BCUC should place more responsibility on regulated entities to report, on an exception basis, deviations from forecasts that could affect costs and rates, instead of routine reporting.	Government accepts this recommendation and will request that the BCUC address this recommendation in a publically available implementation plan.
24. The BCUC should reconsider the need for a separate Performance Monitoring, Conduct and Compliance group as the best way to manage	Government accepts this recommendation and will request that the BCUC address this recommendation

the compliance reporting function.	in a publically available implementation plan.
Task Force Recommendations: Performance	
Executive Director Position	
25. An Executive Director/ Chief Operating Officer position should be restored and legislatively required.	Government accepts this recommendation and requests that the BCUC proceed with restoring the Executive Director / Chief Operating Officer position. Government will also consider this recommendation as part of its planning for the spring 2016 legislative session.
Capacity and Resource Needs	
26. The Commission should develop a rolling three-year strategic and financial business plan with performance targets and use this as a vehicle to dialogue with stakeholders and the provincial government.	Government supports this recommendation and will work with the BCUC to establish a strategic and financial business plan with performance measures and will ensure that this plan will be incorporated into the regular reporting relationship with government.
27. Any government compensation program that affects the BCUC should be designed so that it does not limit its ability to be competitive in recruiting and retaining staff.	The Ministry of Energy and Mines and PSEC will work with the BCUC to develop options for improving the BCUC's ability to recruit and retain staff.
28. The BCUC's budgeting process should be transparent and ensure budgeted and planned expenditures are reflective of its operating environment.	Government will ensure that any changes implemented will be incorporated into the regular reporting relationship with government.
29. The Province should partner with the BCUC on developing an information technology strategy and evaluate database search engines used by other regulators for application in British Columbia.	Government supports the recommendation and the BCUC should work with the Ministry of Technology, Innovation and Citizens' Services to facilitate options for improving BCUC information technologies.
Performance Measures	
30. In consultation with government and stakeholders, the BCUC should establish performance indicators and targets, including but not limited to application cycle times (Recommendation #21), and report results on its website and in its Annual Reports.	Government accepts this recommendation and requests the BCUC implement it in conjunction with Recommendation #26.

Task Force Recommendations: Other Matters	
BC Hydro: A Different Regulatory Approach	
31. Government should make use of section 5 inquiries for projects and plans that it may otherwise wish to exempt.	When appropriate, government will consider making use of section 5 under the <i>Utilities Commission Act</i> .
32. Government should confirm the Commission's ability to undertake prudency reviews of the execution of exempted projects.	Government will work with the BCUC to determine if clarity is required.
Investor Owned Water Utilities	
33. The regulation of private water utilities should remain with the Water Comptroller.	Government accepts this recommendation.
Public Communication	
34. As time and resources permit, many of the detailed Commission Guidelines and Policies should be condensed and published as pamphlets.	Government accepts this recommendation and requests that the BCUC implements it.
35. For high profile decisions, the Commission should consider issuing news releases and fact sheets to help the media and public understand the decisions.	Government accepts this recommendation and requests that the BCUC implements it.