

Understanding Utility Regulation

A Participants' Guide to the British Columbia Utilities Commission



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CHAPTER 1

Energy Regulation In British Columbia

- **Introduction**
 - **Overview**
 - **Why Electricity and Natural Gas Utilities are Regulated**
 - **Regulated versus Non-Regulated Markets**
 - **Market Evolution**

Introduction

The British Columbia Utilities Commission ("the B.C. Utilities Commission", "the Commission") is an independent regulatory agency of the Provincial Government that operates under and administers the *Utilities Commission Act*, attached as Appendix A. The Commission's primary responsibility is the regulation of the energy utilities under its jurisdiction to ensure that the rates charged for energy are fair, just and reasonable, and that utilities provide safe, adequate and secure service to their customers.

As a consumer of electricity or natural gas you may have concerns about the rates that you pay for these commodities, the reliability of your utility service, or the efficiency with which this energy is supplied and consumed. You may feel strongly enough that you want to get involved in regulatory proceedings for the purpose of expressing your concerns publicly and to judge for yourself the facts of rate, service or efficiency issues. The purpose of this Guide is to assist you to participate effectively and economically in the regulation of energy utilities in B.C. The Commission values public input in the issues for which it is responsible, and has prepared this Guide to help you to become more involved in our various activities.

In this chapter and the chapters that follow, background information is provided on the Province's regulated energy industries, the regulators and the processes used by regulators.

Overview

The first critical step in getting involved with an energy issue is to identify the government department(s) or agency(ies) that has the relevant authority. This Guide focuses on the regulatory functions of the Commission. The roles and responsibilities of other government institutions in energy matters are outlined in Chapter 6.

Before one becomes involved in proceedings at the Commission, it is important to understand the reason for energy regulation. The following chapter addresses this topic.

Why Electricity and Natural Gas Utilities are Regulated

Why are natural gas and electric utilities treated differently from so many other businesses? The justification for regulating these businesses is that they are "natural monopolies". In other words, certain characteristics of the electricity and natural gas business have made a monopoly market structure the most efficient way of providing these services. The industry is dominated by "economies of scale"; that is, the unit cost of production or delivery decreases as total demand increases. This means that one large firm can provide the goods or service at a lower cost than two or more firms. The high cost of having several companies instead of a monopoly is evident if one contemplates the possibility of several sets of electrical wires connected to each customer, with each set of wires owned by a different company competing to be the electricity deliverer for that customer. Other industries with some natural monopoly characteristics include local telephone service, water supply and railways. The term "utility" is frequently applied synonymously with natural monopoly.

Currently, there is broad agreement that the transmission and distribution components of the electricity and natural gas industries are natural monopolies. It has also been assumed that the generation component of the electricity industry exhibits substantial natural monopoly characteristics and that there are benefits from single ownership and operation. Thus, the electricity industry is frequently characterized not just by monopoly within each component, but also by "vertical integration"; that is, a single firm is responsible for several aspects of the industry, from generation to customer billing. The natural gas industry is not "vertically integrated". In B.C., many buyers and sellers make up the gas supply market, while the transmission and distribution of gas are monopolies, these services are not necessarily provided by the same company.

While the monopoly market structure can lead to cost advantages to the public, it also poses potential risks from abuse of monopoly power. If customers have no choice but to purchase energy from the only utility operating in their area, the utility could potentially charge excessive prices while paying insufficient attention to customer service.

Governments have taken two basic approaches to regulating utilities to ensure that they do not abuse their monopoly power. These are: (1) private ownership with public agency regulation, and (2) public ownership with regulation by Cabinet or by a public agency. Specifically, regulation is intended to ensure that rates are fair, just and reasonable; that utility service is adequate, safe, efficient, just and reasonable; and that a balance is achieved between customer needs and the needs of both utility owners and creditors. In B.C., a publicly owned electric utility and over a dozen privately owned electric and natural gas utilities have been given their own service areas over which they have an exclusive monopoly (see Table 2-1, Chapter 2, pp. 7-8 for a complete listing). The Commission is responsible for

reviewing and approving the rates, return on equity, operating and maintenance expenditures, and capital investments of these electric and natural gas distribution utilities. The Commission also provides economic regulation for five oil pipelines under the *Pipeline Act*.

Regulated versus Non-Regulated Markets

In B.C., electric and natural gas utilities are regulated by the Commission. Sales of other forms of energy such as crude oil, gasoline, other petroleum products, coal, bulk propane, steam, wood and hydrogen are not regulated, except where they are distributed in a monopoly grid system. Similarly, energy which is supplied directly to a customer and bypasses the need for a transmission system or distribution grid is not affected by the current regulatory scheme for energy markets. A wind-powered water pump installed on-site is an example of an energy system that does not require access to transmission wires to deliver power service to the customer.

In addition to energy resource markets, which are not included in the *Utilities Commission Act*, there are markets which ordinarily would be regulated by the Commission but which have been granted exemptions from the *Utilities Commission Act*. 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*. Typically, exemptions from various sections of the *Utilities Commission Act* are given to independent power producers and to industries which generate power for their own use and sell surplus energy to regulated utilities or a limited number of customers in close proximity to the generator.

Market Evolution

Wherever competitive markets can replace regulated natural monopoly markets, and lead to lower rates for a given level of service, the market structure and the role of the regulator may change. This has occurred over the last decade in the long distance telephone industry and in the production of natural gas. Natural gas production has become a competitive market while its transmission and distribution remain regulated monopolies. There has been a recent trend throughout the world for the generation of electricity to become competitive, leaving electricity transmission, dispatch and distribution to remain regulated. The Commission is constantly assessing whether various components of current utility services can be made competitive as a result of technological advancement or other changes in the marketplace.

CHAPTER 2

The British Columbia Utilities Commission

- **Introduction**
- **Structure and Composition of the Commission**
- **Jurisdiction of the Commission**

Introduction

The British Columbia Utilities Commission, in its present form, was established by the provincial legislature through the enactment of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473. The Commission is an administrative tribunal, often referred to as a "regulatory tribunal", because it regulates the affairs of energy utilities; or as a "quasi-judicial tribunal", because its public processes are loosely structured on those of the courts and must satisfy standards of procedural fairness that apply to administrative tribunals.

An administrative tribunal is a government agency created by statute to make decisions that would otherwise be made by the executive branch of government - Cabinet or one of its ministers. It must act within the powers which it has been granted by government in its governing statute. The actions of the Commission must also accord with any special directions the government issues under the *Utilities Commission Act* with respect to the powers and functions of the Commission. Government creates administrative tribunals for the following reasons:

- **Independence and neutrality:** The government assigns responsibility for making decisions that involve the determination of competing rights or social interests to an independent and neutral body so that these decisions can be made in a forum largely insulated from political pressures.
- **Expertise:** Another rationale for administrative tribunals is that they provide a more convenient forum for applying technical expertise to decide technically complex issues. Those who sit on tribunals are frequently selected for their technical expertise.
- **Public access:** Public access to government departments tends to be informal. Decisions that attract public controversy may require the more structured public participation processes of administrative tribunals to ensure fair and equal treatment of all affected and interested parties.

As a tribunal, the Commission must use its discretion to ensure that the decisions it makes are fair. The processes it uses to arrive at fair decisions depend, to a great extent, on the nature of the issue before it. "Procedural fairness" may require that a public hearing be held, that there be adequate public notice for such a hearing, that participants be given an opportunity to cross-examine witnesses, or that the tribunal itself should issue written reasons when it makes its final decision on the issue based on the public record. Not all of these elements will always be required to ensure fairness. The Commission has some discretion on the choice of procedures, and the procedural details may vary from issue to issue.

Structure and Composition of the Commission

The Commission is composed of commissioners, vested with the authority of the *Utilities Commission Act*, and the Commission staff whose responsibility is to provide technical and administrative support to the commissioners. (See Figure 2-1, Chapter 2, p. 6)

The Commissioners

The Commission is currently comprised of two full-time and four part-time (or “temporary”) commissioners. Full and part-time commissioners are appointed at the pleasure of the Lieutenant Governor in Council (Cabinet) for a period of not more than five years. Commissioners may, however, be re-appointed. Temporary commissioners may be appointed for the duration of a specific proceeding or other specified period.

The Chairperson, as Chief Executive Officer of the Commission, supervises and directs the work and staff of the Commission. Commissioners serve as members of panels to hear and decide matters before the Commission. 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. Under the *Utilities Commission Act*, two commissioners are a quorum.

Commission Staff

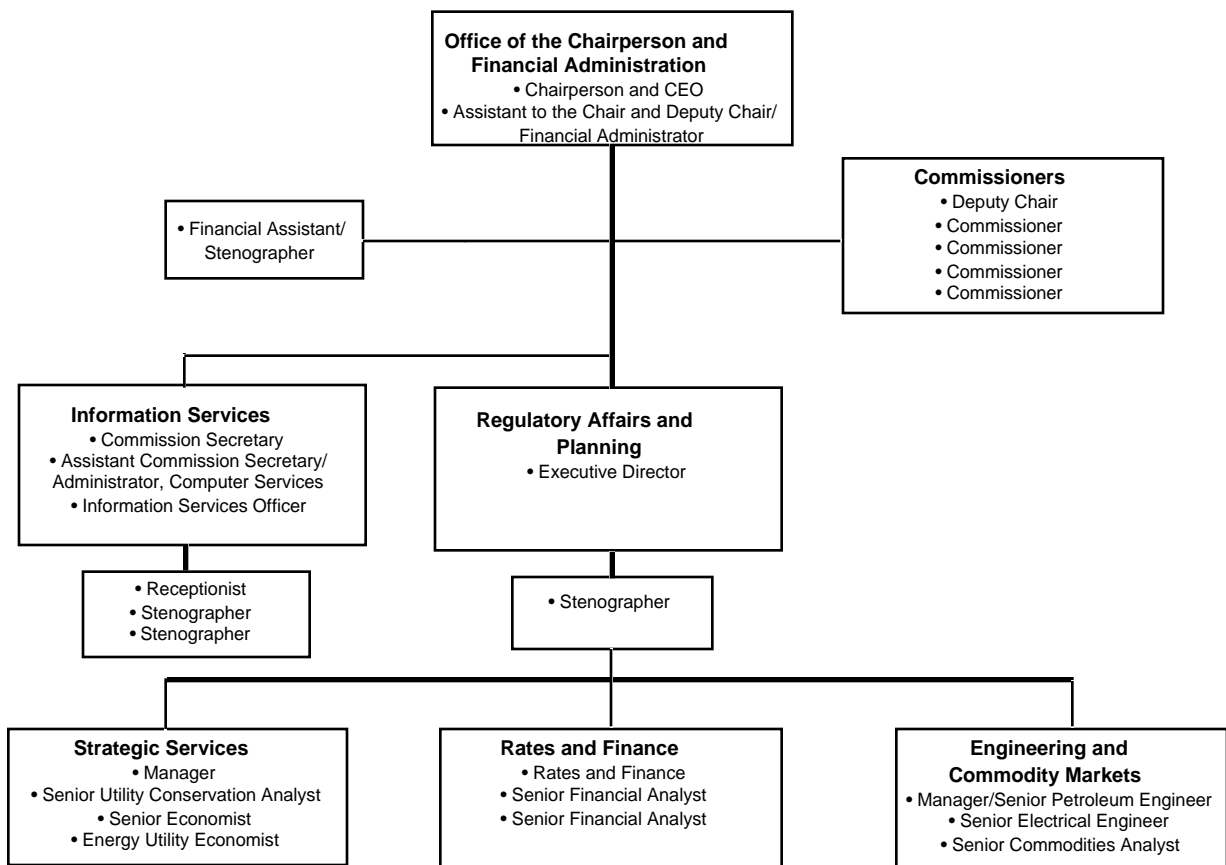
The Commission staff is divided into three groups:

- **Information Services:** Consists of the Commission Secretary and the Information Services Group. The Commission Secretary acts as the official contact for both regulated utilities and the public. The department responds to all information requests (including Freedom of Information requests), and provides in-house computer services, media interaction, and library services. It also deals with utility customer complaints and operates and maintains the Commission's information resources. The Commission's Annual Report to the Legislature is prepared by this group. The Report is provided to those individuals on the Commission's database and it is also available upon request.
- **Regulatory Affairs, Strategic Services and Planning:** Consists of professional staff with broad experience in the areas of accounting, economics, and engineering. The regulatory affairs and planning functions of the Commission include the review of: energy supply, energy conservation, financial, accounting, social and economic impacts and the safety aspects of energy

production, transmission, and distribution. In considering all sides of a matter under review by the Commission, staff have a responsibility to develop a full record of evidence. This often requires that staff be technical advisors to the Commission, and also provide external expert witnesses to testify at hearings.

- **Office of the Chairperson and Financial Administration:** Provides a range of administrative, clerical and support services to the Commission and Commission staff. Responsibilities include the maintenance of the Commission's database of mailing lists, filing of tariff pages, accounts payable/receivable, and preparing and monitoring all Commission contracts.

**Figure 2-1
ORGANIZATIONAL CHART OF THE COMMISSION**



January 29, 1999

Jurisdiction of the Commission

As previously noted, the Commission's regulatory jurisdiction is defined by the *Utilities Commission Act* and part seven of the *Pipeline Act*. At present, the Commission regulates six electric utilities, eight gas utilities (two of which also provide propane service), one steam heat utility, and five pipelines.

Table 2-1

ELECTRIC	SERVICE AREA
British Columbia Hydro and Power Authority (a Crown Corporation)	Lower Mainland, Vancouver Island, Central and Northern B.C., Field and the East Kootenay Regions
Hemlock Valley Electrical Services Limited	Hemlock Valley
Princeton Light and Power Company, Limited	Princeton, Coalmont, Tulameen, Osprey Lake, Missezula Lake
Siliversmith Light & Power Corporation	Sandon
West Kootenay Power Ltd.	West Kootenays and South Okanagan
Yukon Electrical Company Limited	Lower Post

NATURAL GAS	SERVICE AREA
BC Gas Utility Ltd.	Lower Mainland and Fort Nelson Areas, Central Interior, Okanagan, Northern Interior, and East and West Kootenays
Squamish Gas Co. Ltd. (a BC Gas subsidiary)	Squamish
Centra Gas British Columbia Inc.	Distribution: Vancouver Island, Sunshine Coast Transmission: Vancouver Island Natural Gas Transmission Pipeline to the Sunshine Coast, from Coquitlam to Squamish, Powell River, Campbell River, and South to Victoria
Centra Gas Fort St. John Inc. (a PNG subsidiary)	Fort St. John
Pacific Northern Gas Ltd.	Summit Lake to Prince Rupert and Kitimat
Pacific Northern Gas (N.E.) Ltd.	Dawson Creek, Rolla, Pouce Coupe and Tumbler Ridge

PROPANE GRID SYSTEMS	SERVICE AREA	STEAM HEAT	SERVICE AREA
Pacific Northern Gas Ltd.	Granisle	Central Heat Distribution Limited	Downtown Vancouver
Port Alice Gas Inc.	Port Alice		
Centra Gas Whistler Inc.	Whistler		
BC Gas Utility Ltd.	Revelstoke		

PIPELINES	SERVICE AREA
Federated Pipe Lines (Western) Ltd.	Taylor to Kamloops
Morrison Petroleum Ltd. Newcal Energy Inc.	Gathering Lines in North Eastern B.C.
Suncor Inc. Resources Group	Blueberry to Taylor
Trans Mountain Enterprises of B.C. Limited	Burnaby to Vancouver International Airport

Overview of Commission Responsibilities

Under the *Utilities Commission Act*, the Commission is assigned responsibility for the general supervision of public utilities (Sections 23 and 24; See Table 2-2).

Table 2-2

General supervision of public utilities

23 (1) The commission has general supervision of all public utilities and may make orders about

- (a) equipment,
- (b) appliances,
- (c) safety devices,
- (d) extension of works or systems,
- (e) filing of rate schedules,
- (f) reporting, and
- (g) other matters it considers necessary or advisable for
 - (i) the safety, convenience or service of the public, or
 - (ii) the proper carrying out of this Act or of a contract, charter or franchise involving use of public property or rights.

(2) Subject to this Act, the commission may make regulations requiring a public utility to conduct its operations in a way that does not unnecessarily interfere with, or cause unnecessary damage or inconvenience to, the public.

Commission must make examinations and inquiries

24 In its supervision of public utilities, the commission must make examinations and conduct inquiries necessary to keep itself informed about

- (a) the conduct of public utility business,
- (b) compliance by public utilities with this Act, regulations or any other law, and
- (c) any other matter in the commission's jurisdiction.

Overall, the Commission has a duty to protect the public interest and, particularly, the interests of ratepayers by ensuring that public utilities provide safe and reliable service at a reasonable price. The Commission's specific functions include:

- setting utility rates (Sections 58-61);
- extensions (Section 30);
- assessing utility proposals to extend existing facilities or build new facilities (Section 45);
- deciding whether utilities should be permitted to issue new shares in their corporate entities (Section 50);
- supervising the consolidation, amalgamation, and mergers of utility corporations (Section 53); and
- supervising contracts between the utilities and large customers or other electricity and natural gas suppliers (Sections 65-67, 69, 71 and 64).

Other important powers of the Commission are summarized in Table 2-3, Chapter 2, p. 10. Please refer to the *Utilities Commission Act* in Appendix A for exact wording.

Under Part 7 of the *Pipeline Act* a pipeline operator must file with both the Commission and the pipeline shippers an annual forecast of capital expenditures, revenue and expenses based on expected throughput. After the year-end, a variance statement is filed which compares actual revenue and costs with the forecast. The operator must advise the Commission and shippers of any capital expenditure plans which would increase rates, and must seek concurrence from shippers prior to beginning construction. Tariff rates are negotiated between the parties and are filed with the Commission for approval. The Commission's review of these filings is minimal unless a complaint is received, in which case the matter will be investigated by Commission staff and may be resolved by a negotiated settlement process assisted by Commission staff. In some cases the complaint may require review in an oral or a written hearing by the Commission.

Public Reviews

Under Section 5 of the *Utilities Commission Act* the Lieutenant Governor in Council (Cabinet) can ask the Commission to conduct an independent public review and report its findings and recommendations on *any* matter. Such a request is ordinarily accompanied by terms of reference that define the scope of the review. The terms of reference may require that a public hearing be held. The role of the Commission under Section 5 is to provide Cabinet with recommendations. The Commission's recommendations, however, are not binding. The government uses this section to address complex and important public policy issues that require both technical expertise and public input. Recent examples are the British Columbia Electricity Market Review (1995), and the Kemano Completion Project Review (1993-94).

Table 2-3

Application for Energy Removal (Export) Certificate (Section 18)

Where the minister refers an application for an energy removal certificate to the Commission for review, the Commission considers the application in a public hearing, according to the terms of reference specified by the minister.

Extension of Service (Section 30)

The Commission may order a utility to extend service to a community after holding a hearing to determine that the utility may properly be considered responsible for that area. Such an extension is not to substantially increase the rates within the utility's existing service area.

Certificate of Public Convenience and Necessity (Sections 45 and 46)

A utility has to apply to the Commission for a Certificate of Public Convenience and Necessity ("CPCN") before beginning construction of a new plant or system. The Commission has the discretion to require an application for a CPCN before a utility constructs or operates an extension to its existing system. For an approval the Commission needs to be satisfied that the new system or extension is in the public interest and necessary for the public's convenience.

Commission Approval for Issue of Securities (Section 50)

Long-term debt or capital stock issued by a utility requires Commission approval.

Consolidation, Amalgamation and Merger (Section 53)

Commission approval is required for a utility's proposed consolidation, amalgamation or merger with another corporation.

Rate Making (Sections 58-63)

The Commission may, after a hearing, determine that the rates charged by a utility are unjust, unreasonable, insufficient, and unduly discriminatory or in violation of the *Utilities Commission Act*.

The Commission holds public hearings before fixing the schedule of rates that a utility may charge for the classes of services it provides. In light of the complexity of rate making, the process is frequently broken down into separate hearings on revenue requirements, return on equity, and rate design.

Service Contracts (Section 64)

The Commission may, after a hearing, find that a contract for service between a utility and a customer is discriminatory or preferential, and unenforceable.

Common Carriers (Sections 65-67)

An interested party may apply to the Commission to hold a hearing and declare that a person, who owns or operates a plant for processing or purchasing fossil fuels or operates a pipeline, is a "common carrier" or public utility and is, therefore, governed by the *Utilities Commission Act*.

Electricity Transmission Contract (Section 69)

Electricity Transmission Contracts are to be filed with the Commission. The Commission may, after a hearing, find that a contract for electricity transmission (or wheeling) entered into by a utility, is not in the public interest and declare the contract unenforceable.

Energy Supply Contract (Section 71)

The Commission, after a hearing, may find that an energy supply contract entered into by a utility is not in the public interest and declare the contract unenforceable.

Complaints (Sections 25, 47, 58 and 72)

Complaints can be made about unsafe or inadequate utility service, unjust, unreasonable, insufficient or discriminatory rates, failure to obtain a CPCN, and failure to comply with the *Utilities Commission Act* and other Acts or regulations made by a regulatory authority.

Participant Costs (Section 118)

The Commission can order a participant in a proceeding before the Commission, to pay the costs of another participant or the Commission can pay costs to participants in its proceedings.

CHAPTER 3

Opportunities for Public Participation at the BCUC

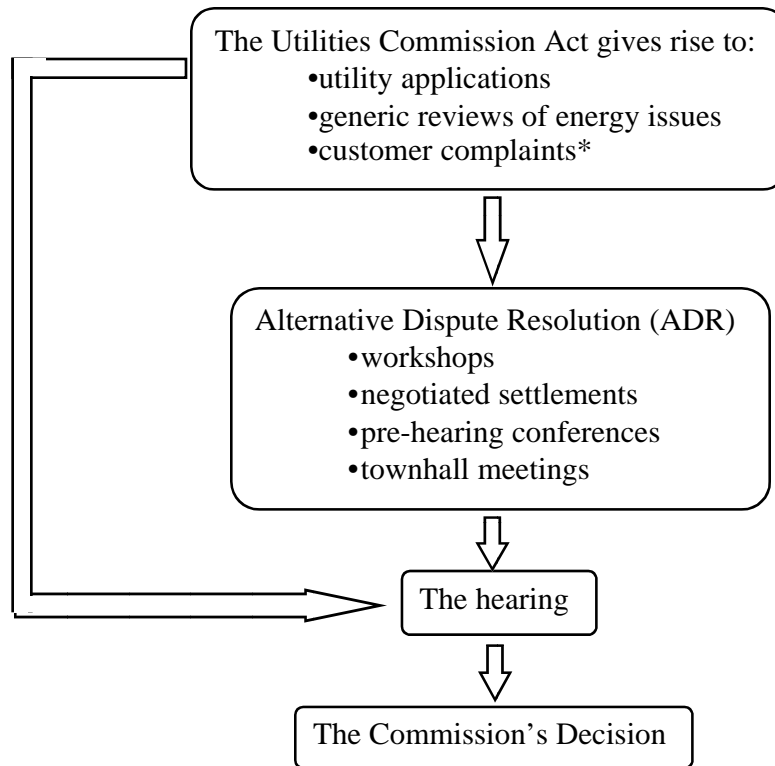
- **Introduction**
- **Complaints**
 - **Alternative Dispute Resolution (“ADR”)**
 - **Hearings**

Introduction

There are three main avenues by which an individual or group can become involved in the Commission's decision-making process. The most frequent avenue is by intervening in a proceeding or hearing into a utility application by the Commission. For example, public utilities must apply to the Commission for approval to increase their rates. People representing diverse interests often intervene in such applications. The second avenue is by participating in one of the Commission's generic reviews. If, for instance, the provincial government requests the Commission to inquire into a contentious energy issue, the Commission holds hearings at which members of the public are invited to share their views. Finally, a member of the public can file a complaint with the Commission on a matter that is of particular concern to them. For example, a utility customer may complain to the Commission that the utility should obtain a certificate of public convenience and necessity before constructing its next project. There are differences in the ways in which utility applications, generic reviews, and complaints are handled by the Commission. Nevertheless, the Commission has developed common mechanisms for public participation during the course of each of these three types of regulatory proceedings. An important component of public participation is the provision of reasonable notice of a hearing to utility customers and other interested parties. This is discussed in Chapter 4, p. 29, "The Public Hearing Process".

The following sections explain the opportunities and methods for public participation at the Commission. Complaints are described first. The Commission uses various methods including alternative dispute resolution to deal with utility applications, generic reviews and occasionally, complaints. Workshops, negotiated settlements, pre-hearing conferences, and town hall meetings are among the types of alternative dispute resolution ("ADR") which the Commission frequently uses to supplement and sometimes replace the traditional hearing process (see Chapter 3, p.14). These are discussed next. The final component of this chapter will explain the public hearing process. Public hearings are the Commission's traditional means of processing utility applications and are also used to gather information for generic reviews.

Figure 3-1



* Please note that most complaints are resolved at the staff level and do not proceed through this process.

Complaints

The Commission generally receives three types of complaints:

- complaints filed against regulated utilities by other utilities, individuals or groups;
- complaints filed by utility customers regarding their bills; and
- complaints made by shippers on intra-provincial oil pipelines under the *Pipeline Act*.

The Commission handles complaints under Sections 25, 47, 58, and 72(1) of the *Utilities Commission Act*. The Commission determines the process by which the complaint should be handled based on the nature of the complaint and the section of the *Utilities Commission Act* which applies.

The following are examples of complaints made by a public utility or an interested party:

- the utility's service is unsafe or inadequate (Section 25);
- the utility's rates are unjust, unreasonable, not sufficient or discriminatory (Section 58);
- the utility has failed to obtain a certificate of public convenience and necessity before constructing or operating a plant or system (Section 47);
- the utility has failed to comply with the *Utilities Commission Act*, another Act, a regulation, order, bylaw or direction made by a regulatory authority (Section 72(1)). For example, B.C. Hydro must comply not only with the *Utilities Commission Act* but also with the *Hydro and Power Authority Act* and applicable Special Directions issued by the Provincial Government.

In any of the foregoing examples, the Commission has the jurisdiction to hold an inquiry or a hearing to determine an application by or on behalf of any interested party.

When the Commission receives a complaint, a staff member is assigned to investigate and report on the matter. Depending on the seriousness of the complaint, the Commission may hold an inquiry or a hearing before making its decision. Generally, a customer may complain to the Commission about any conduct by a public utility that falls within the regulatory jurisdiction of the Commission.

The most common complaints received by the Commission are customer service complaints. Utility customers who are unable to resolve a dispute with their respective utility on their own may file a complaint with the Commission. Prior to accepting a complaint, the Commission must be satisfied that the customer has made a serious attempt to settle the dispute with the utility. While complaints are often successfully resolved between the customer and the utility, the Commission is available to settle unresolved complaints.

A complaint to the Commission should be made in writing to the Commission Secretary. It should contain the following information:

- name of the complainant;
- complainant's address and telephone number;
- utility account number (optional);
- the key elements of the dispute;
- names of utility staff/officials contacted;
- dates when contacts were made;

- copies of any correspondence made to, or received from the utility; and
- reasons, from the customer's viewpoint, why the problem was not resolved.

Upon receipt of the customer's complaint, Commission staff review the material submitted and then forward a copy of the filing to the respective utility for comment. Once a response has been received from the utility, staff review the complaint to determine if enough information has been obtained in order to resolve the complaint. The majority of complaints deal with issues (such as security deposits, rates charged, notices of disconnection, etc.) that are contained within the utility's filed tariff and are resolved at the staff level. In cases where a resolution satisfactory to the utility and complainant is not possible, the complaint is brought before the Commission for review and resolution. Complaints which reach this stage usually deal with issues that are more complex or not totally covered by the utility's filed tariff.

Typical customer service complaints include the following:

- Utility Practices/Procedures
- Customer Billings
- Disconnection of Service
- Gas Mains/Power Line Extensions
- Third-Party Billings
- Meter Reading and Estimates

Alternative Dispute Resolution ("ADR")

The Commission, like other regulatory tribunals, has traditionally relied on public hearings as the forum for involving the public in its decision-making. To improve the effectiveness and efficiency of electricity and natural gas regulation in British Columbia, the Commission has adopted procedures that are alternative or complementary to its traditional public hearing process. For example, the Commission uses technical workshops, pre-hearing conferences, and discussion groups to encourage regulatory participants to discuss issues in an open, flexible and less formal manner. The Commission also uses ADR to seek agreement among participants about regulatory matters before the Commission. (See Table 3-1, Chapter 3, p. 15).

Table 3-1

Advantages of ADR

- ADR allows for the incorporation of an educational component on complex issues to assist the participants in developing a common understanding of the issues in advance of the hearing process; and
- ADR gives participants an opportunity to meet in an informal setting to attempt to explore and resolve the issues in dispute, thereby reducing the need for a lengthy and expensive hearing.

ADR may not be appropriate in every case but, used in the right circumstances, ADR can enhance participant satisfaction with the process and reduce the cost and length of traditional hearings.

Workshops

The Commission uses workshops to facilitate public discussion and debate on emerging or complex regulatory issues. The general purpose of a workshop is to educate and inform. During the past few years, the Commission has sponsored workshops prior to hearings. Utilities have also sponsored workshops. Topics have varied from the very narrow to the very broad. Workshops can include opportunities for active discussion or may simply be a presentation followed by questions from participants. While workshops may not lead directly to the resolution of issues, they contribute to efficient resolution because they result in more informed public participation.

The 1995 British Columbia Electricity Market Review is an example of a process that benefited greatly from the use of workshops. Organized by Commission staff, the workshop ran over four days. It included local, national and international guest speakers and provided an opportunity for questions from participants. In addition, there were small group discussions about specific issues. The members of the Review Panel attended portions of the workshops but, to encourage frank and open discussions, they did not attend when participants were engaged in discussion groups.

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. Examples of the latter might be workshops on Integrated Resource Planning, or a utility proposal for a customer information system. It is anticipated that workshops will make the Commission's regulatory processes more accessible to the public by providing information and developing a common knowledge base among participants in advance of more formal decision-making processes.

Pre-Hearing Conferences

Pre-hearing conferences are held to allow Commission staff, the utility, and registered intervenors the opportunity to discuss and, where necessary, reach agreement on 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. The Commission may also convene "issues meetings" conducted by Commission staff 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.

While most hearings involve some issues for which there is a low probability of agreement between the parties, they may also involve issues on which the parties can come to agreement. Pre-hearing conferences may identify issues to be dealt with expeditiously through a negotiated settlement process.

Town Hall Meetings

The Commission is aware that its role in regulating utilities and providing advice to government can have significant consequences for residents in every community in B.C. It is important, therefore, for the Commission to become informed about the views held by residents of communities that will be most affected by its decisions. One way the Commission has tried to improve public input at the local level is by holding town hall meetings in communities across the province. These meetings have been undertaken in various ways. The Commission has directed smaller utilities to hold town hall meetings to discuss applications and obtain feedback from customers in their service areas. The Commission receives a written commentary from the utility 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. The Commission has used town hall meetings, sometimes called community hearings, for members of the public to make short, informal presentations to the hearing panel as part of a more technical hearing. These presentations become part of the hearing record. 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.

Negotiated Settlement (Appendix B)

Negotiated settlement is a potential 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. 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. Alternatively, if the process is successful and a settlement is reached, the participants will have been able to craft their own resolution to the issues in an application.

The discussion which follows is only a brief overview of the negotiated settlement process. (See Appendix B for a more comprehensive explanation of the process.)

On receipt of an application from a utility, the Commission will first decide whether to use an ADR process and if so, which issues should proceed to a negotiated settlement and which should proceed to a full hearing. The utility and registered intervenors are invited to comment on this initial selection. This might be done through a pre-hearing conference or less formally through a written response to a proposed list. Once the parameters of the negotiations have been defined, the settlement negotiations can begin. Members of the Commission staff are present throughout the settlement process for two reasons. First, they help to keep the process moving forward. Second, they represent the interests of those who are not present at the negotiations, thereby ensuring that the public interest is given full consideration in the negotiations. 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 must accept or reject the settlement package as a whole. If, however, the Commission is concerned about a single issue in the package, it can raise the issue with the participants and determine whether they can agree to the change to the package. Otherwise, a full hearing into all of the issues will be required, perhaps before a new panel of commissioners.

Hearings

Hearings typically arise as a result of applications made by Utilities or through the Commission's investigation into a complaint. In addition, Section 82 of the *Utilities Commission Act* allows the Commission, either on its own motion or on the request of the Lieutenant Governor in Council (Cabinet), to inquire into and hear any matter that falls within the scope of the *Utilities Commission Act*. For example, the Commission may initiate a generic hearing to examine an issue of importance to regulated utilities generally, such as the Return on Equity for both electric and gas utilities. In this way, public utilities as well as other interested parties are provided with an opportunity to participate in the development of important regulatory practices.

Most of the hearings conducted by the Commission are in response to filings from regulated utilities. These include, for example, applications for construction of facilities such as a new high voltage transmission line, for increases in a utility's rates and for changes in rate design. A smaller number are held in response to complaints, or public inquiries into subjects of particular interest to the Commission or the provincial government.

Hearing Format

The hearings conducted by the Commission can be oral or written.

Written hearings, as the term suggests, are conducted 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, offer participants an opportunity to appear in person before the Commission, present oral evidence and ask questions of the utility's and other parties' witnesses. Witnesses present their evidence under oath or affirmation (Chapter 4, p. 31, "The Public Hearing"). Parties are often represented by legal counsel. However, it is not necessary that an intervenor be represented by legal counsel nor is it essential to have a legal background or legal knowledge to participate effectively in these proceedings. Verbatim transcripts of oral hearings are produced for the public record, in both paper and electronic form.

In general, an oral hearing tends to be the preferred form of hearing where parties feel that a decision may have significant implications for their interests and where the evidence of experts and witnesses is important to an issue. Subject to certain legal principles, the decision whether a hearing should be written or oral rests with the Commission. Factors that are considered in any decision regarding the form of a particular hearing include the nature of the interest involved, the number of parties involved, and the nature of the issue. For example, the Commission might hold an oral hearing where a decision may have significant monetary effects for a broad range of interests, and where there are numerous difficult issues, some of which could have important policy implications.

Reviews

Under Section 5 of the *Utilities Commission Act*, the Lieutenant Governor in Council may request the Commission to undertake a review and submit a report and recommendations on energy policy related issues. This type of review may take a relatively long time depending on whether the terms of reference are broad or narrow, and result in the Commission submitting a report and recommendations to the

Lieutenant Governor in Council for review and decision by Cabinet. The most recent reviews conducted under this section were the British Columbia Electricity Market Review (1995) and the Kemano Completion Project Review (1993/1994).

Length of Hearings

Public hearings before the Commission can take from half a day to many months. The length of the hearing depends upon many factors, as outlined in Table 3-2.

Table 3-2
Factors Affecting Hearing Length

The reason for the hearing:

- A utility applies for an increase in rates, a new rate design or certificates of public convenience and necessity either for franchises to new service territories or for capital projects. These hearings usually do not take more than three weeks to complete.
- The provincial government requests the Commission to conduct a public review and to report recommendations under Section 5 of *Utilities Commission Act*. The Kemano Completion Project Review took two years to complete. The actual hearing lasted 87 days over ten months. Similarly, the British Columbia Electricity Market Structure Review, including some alternative dispute resolution components, lasted several months.

The size of the utility applying:

- Only a day or two may be needed to hear the applications of small utilities.

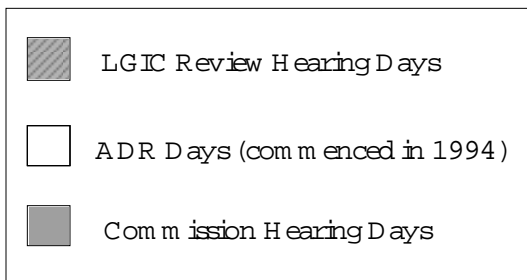
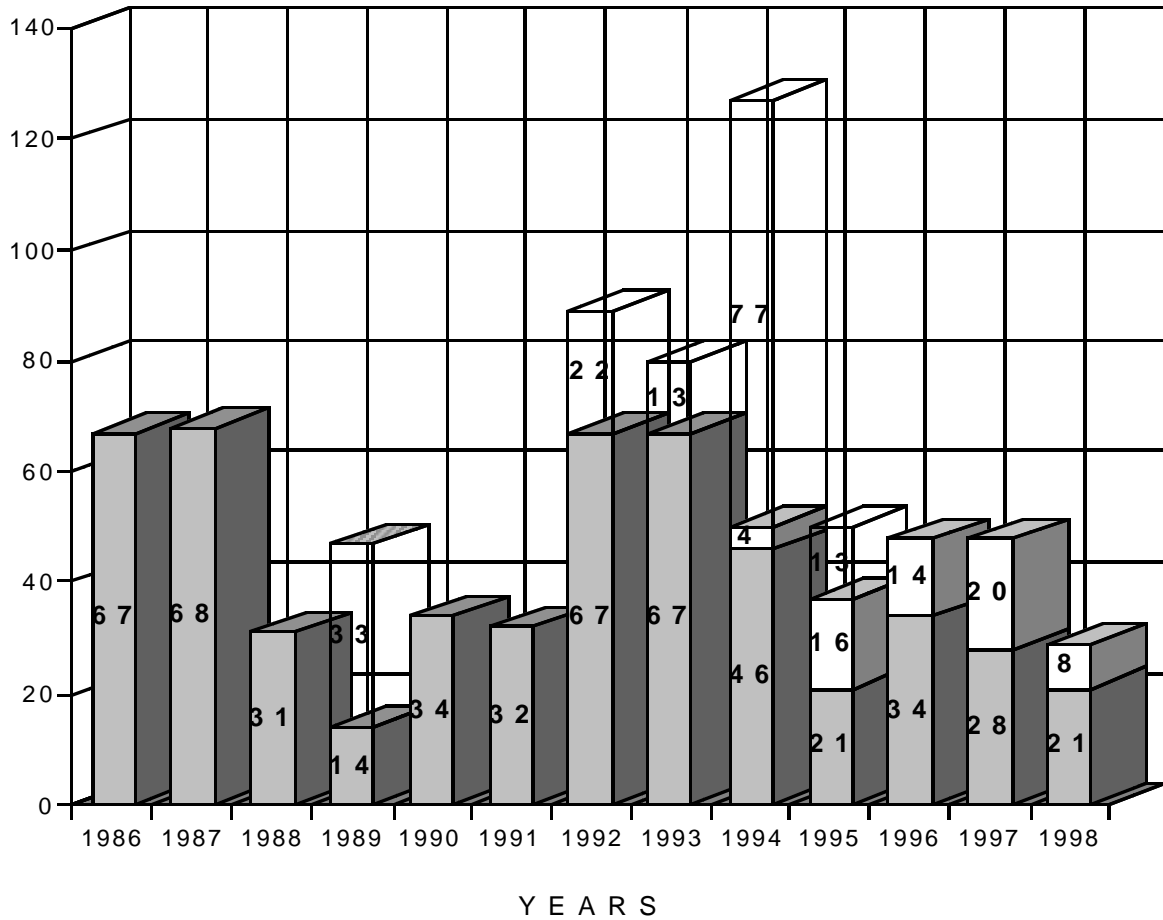
Whether or not a negotiated settlement process occurred:

- The public hearing could last less than one day, because all or most issues have been resolved in the settlement process by agreement.

Figure 3-1 shows Lieutenant Governor in Council Reviews, Alternate Dispute Resolution and Oral Hearing Days.

As you can see in Figure 3-1, the volume of hearing activity varies significantly from year to year. It is difficult to estimate just how many days you might expect to be involved, in any one year.

**Figure 3-1
HEARING DAYS AND
ALTERNATIVE DISPUTE RESOLUTION DAYS**



CHAPTER 4

How to Get Involved in the Commission's Proceedings

- **Staying Informed**
- **Becoming Involved**
 - **Getting Started**
 - **The Public Hearing Process**
 - **Reconsideration and Appeals**
 - **Commission Reconsideration**
 - **The Court of Appeal for British Columbia**
 - **The Ombudsman**

By now you should have a sense of the Commission's role in electricity and natural gas regulation and a general idea of how the Commission involves the public in its regulatory affairs. What can you do in order to become actively involved in the Commission's regulatory activities? This chapter outlines the ways in which you can become informed about the regulatory issues which come before the Commission. It explains how you can be notified of public hearings and how you can register with the Commission in order to become an active participant in a particular proceeding. Sources of funding available to support your participation are also described. The chapter ends with suggestions on how to prepare for a hearing before the Commission or for one of the alternative forms of dispute resolution.

Staying Informed

There are several ways to ensure that you are kept informed about the current activities of the Commission. In particular, the Commission regularly sends various types of information to people listed on its database. It also issues a Regulatory Agenda which serves to keep participants up to date on current activities. The Commission is beginning to use the Internet as a means of disseminating public information on regulatory matters. As well, the Commission's library is an important resource for those who wish to become more informed about past Commission hearings.

Interested Party Database

The Commission maintains a database of interested individuals and organizations who have asked to receive information from the Commission. The database contains names, telephone numbers, e-mail addresses, fax numbers and addresses, and it indicates the types of information the individual or organization has requested. On a regular basis, the Commission generates and distributes the following information:

- Orders (bi-weekly)
- Decisions (upon completion)
- Annual Reports (annually)
- Regulatory Agenda (quarterly)

Individuals or organizations can request to be added to the database in order to receive any of the above information. This information is also posted on the Commission's website: <http://www.bcuc.com>.

Individuals and organizations who register with the Commission as intervenors or interested parties for a proceeding are also added to the database to receive information for that proceeding. The main difference between an intervenor and an interested party is that the former wishes to actively participate in the proceeding while the latter is equivalent to an observer. For each proceeding, the Commission staff compiles what is known as an Intervenor Listing. This is a list of each intervenor or interested party who has registered for the proceeding, along with their address and telephone number. The Intervenor Listing for a given proceeding is made available upon request to all participants involved in that proceeding.

Regulatory Agenda

For those with an ongoing interest in energy utility issues, the Commission issues a Regulatory Agenda on a quarterly basis. The purpose of this Agenda is to provide information on the Commission's upcoming public hearing schedule and on recent hearing decisions. Copies of the Regulatory Agenda are available upon request, or interested members of the public may ask to be placed on the Commission's mailing list either in writing or via e-mail on the Internet.

Commission Library

If you are interested not only in the Commission's current regulatory proceedings but also some of its past hearings, the Commission's library is a useful resource. The library contains transcripts, exhibits, applications and Commission decisions. It also houses a limited range of periodicals and texts on utility regulation. Resources are accessible in electronic, printed, audio and visual media wherever possible. The Information Services Officer provides public access to historical and specialized types of information in the Commission's library. Public documents may be available either electronically or in hard copy form in the Commission's central files.

The library also maintains a network of contacts with other institutions providing an exchange of information in electronic or printed form.

The library is open for use by the public between the hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday to Friday. Material is for reference purposes only. It is recommended that you contact the Information Services Officer or the Information Services Group in advance of your visit. Low volume photocopying is available at a reasonable charge.

The Internet

The Commission has a web site at <http://www.bcuc.com> and the following information is accessible on-line in Adobe Acrobat Reader PDF (portable document format) files:

- Utilities Commission Act
- Commission Brochures
- Regulatory Agendas
- Commission Decisions
- Commission Orders
- Participant Assistance/Cost Award information
- Commission Annual Reports
- Negotiated Settlement Process Guidelines
- Retail Markets Downstream of the Utility Meter Guidelines
- Integrated Resource Planning Guidelines
- A Participants' Guide to the B.C. Utilities Commission

Commission Decisions, transcripts and Orders available on the Commission's web site may also be used for text search and retrieval through *WebSonar*. *Sonar* is a high-speed document search and retrieval program used by the Commission and made available for public access in its offices. *WebSonar* is a CGI application designed by Virginia Systems Software Services, Inc. that works in conjunction with Sonar so that Internet users can also view and search Commission documents by keyword or phrase.

If you need help in accessing these documents, please call Constance Smith at (604) 660-4713 or BC Toll Free: 1-800-663-1385.

Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act* ("FOI") was passed on October 4, 1993. FOI provides two basic rights: the right of the public to access information in government records, and the right of the individual to access his or her own personal information. The Commission's general policy has always been to provide public access to its records except those utility contracts for which the need for confidentiality has been demonstrated. This policy is consistent with disclosure provisions under FOI.

Becoming Involved

Notice of Hearing

A Notice of Hearing published in a local newspaper often alerts members of the public to the fact that their utility is involved in a regulatory proceeding before the Commission. Generally, once the Commission has decided that a public hearing is required, it issues a Hearing Order setting out the date and location of the hearing as well as the deadlines for:

- registering as an intervenor or interested party;
- applying for participant assistance/cost awards;
- making and responding to information requests; and
- filing written evidence.

The Commission normally requires the utility to publish a Notice of Hearing in newspapers within the utility's service area. (The Commission is examining other means of giving notice of hearing such as including the notice with customers' bills.) This notice includes the information set out above as well as contact names for clarification or further information. It may also contain information on processes for alternative dispute resolution, such as workshops, pre-hearing conferences or meetings for negotiated settlements.

Register with the Commission as an Intervenor or Interested Party

An intervenor is an individual or group wishing to participate in a proceeding by making a written or oral submission to the panel of Commissioners hearing the application. 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. You can register by outlining in letter form your specific interest in the proceedings, who you represent, and whether you want to register as an intervenor or interested party. This information can be sent to us by way of letter, fax, or e-mail in time to meet the deadline set out in the Hearing Order. Once you have registered with the Commission, you will start to receive information that you will need in order to prepare for the hearing. The utility will send you a copy of its application and any technical appendices it may file in support of its application. (Sending a copy of your letter of intervention to the utility will help to ensure that this material is delivered to you promptly.) You will also receive copies of any written testimony that is filed with the Commission by the utility or other intervenors, any information requests made by the Commission staff and other intervenors, and the utility's responses to these information requests. Registered intervenors are entitled to make information requests, file written testimony and cross-examine any witnesses who testify at the hearing.

Intervenor status gives rise to several important obligations. As a registered intervenor, you must send copies of any document you file with the Commission to the utility and other registered intervenors; intervenors who file written testimony with the Commission should be prepared to respond to information requests filed by the Commission staff, the utility and other intervenors; and intervenors who attend the oral hearing may be cross-examined on their written and oral testimony. Take careful note of all filing deadlines, including deadlines for participant assistance/cost awards listed in either the Hearing Order or Notice of Public Hearing.

As an intervenor, it is advantageous to attend the hearing, even if you believe that you have already made your points through written submissions. Written submissions which are filed with the Commission by intervenors who do not appear at the hearing are recorded as exhibits and filed as evidence. This evidence may be given less weight because it has not been subject to cross-examination by the applicant, other intervenors, Commission counsel or the Commission panel hearing the evidence. The utility, however, may file evidence to refute your submission, and such evidence may or may not be contested by other intervenors. Therefore, you are likely to accomplish more if you participate during the hearing stage.

Participant Assistance/Cost Awards

In 1993, the *Utilities Commission Act* was amended to give the Commission the discretion to award all or a portion of the costs incurred by a participant in a proceeding. The Commission may either order the applicant utility to pay the costs awarded, or, more rarely, it may pay these costs out of a pre-determined annual Commission budget for participant funding. The Commission's current Participant Assistance/Cost Award Guidelines, including prescribed rates of reimbursement, are provided in Appendix C. The Guidelines establish certain criteria to be considered in awarding costs on a case-by-case basis.

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. The application for a Cost Award should be submitted at the end of the proceeding.

Participant Assistance/Costs Awards may also be available for participation in the Commission's ADR process for pre-hearing conferences, workshops and negotiation days.

The final cost award is made by the Commission panel after the conclusion of the proceeding and is dependent upon the usefulness of the intervenor's contribution to the hearing. Participants should be prepared to wait a reasonable length of time to receive their cheque.

Getting Started

Review the Application

Most Commission hearings are initiated in response to an application by a utility. When a utility applies to the Commission for approval of changes to its business (e.g., rate increase, changes in its tariff terms and conditions or system extensions), the burden of proof is on the utility to justify its application to the Commission. For this reason, the utility is expected to include the written evidence necessary to support its request as part of the application it files with the Commission. In principle, this application should constitute the utility's case, although it is not unusual for the utilities to request permission to file additional documents or make changes to its application at the hearing. In deciding whether to accept late changes, the Commission must consider the significance of the change in the utility's position or evidence and the prejudice it may cause to other participants who prepared for the hearing based on the original application. (See Figure 4-2, Chapter 4, p. 36)

Reviewing the utility application is a difficult task for anyone unfamiliar with utility regulation. The object of the exercise is to follow-up on the interests that led you to intervene in the hearing and to identify your specific interests with the actions proposed by the utility in its application. An intervenor may find several issues of concern in an application. In these circumstances, it is important to consider whether it will be more effective to focus on a few issues and cover them thoroughly, or spread one's resources across more numerous issues. An intervenor might also consider collaborating on some issues with other intervenors. Several intervenors may discover that they have many concerns in common and could be more effective if they shared resources. (See Contacts at the back of this Guide for some possible options.)

Given the complexity of many utility applications, an intervenor may wish to retain the services of a technical expert to conduct a preliminary review of the application, in order to identify areas of interest that warrant further attention before committing to a more substantial undertaking such as filing expert testimony.

Resource Room

During public hearings, the Commission maintains an area where all information relating to the application is kept. The area, referred to as the "Resource Room", is open to the public during normal business hours and contains the utility's application documents, intervenor evidence, exhibits filed at the hearing and a daily record of proceedings - the transcripts. As well, if the hearing is held in Vancouver, intervenors and the public have access to other public information such as previous hearing documents, available both in hard copy and electronically, and other BCUC library resources. Staff are available to assist you with the electronic resources.

Regulatory Affairs and Planning Staff Assistance

Commission staff are active participants in the hearing. They review the utility's application, make information requests and provide Commission counsel with questions for witnesses who testify at the hearing.

The primary function of the staff is to assist the Commission to obtain a complete record upon which the Commission may make its Decision. The staff do not advocate or argue for any particular position on the issues before the Commission.

Commission staff and counsel are available before and during the hearing to assist intervenors to obtain information efficiently and for scheduling intervenor presentations.

Requests for Information

Once Commission staff and registered intervenors have reviewed the utility's application, 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 hearing. The usual format is to prepare an information request. Information requests cite the volume, tab and page number where an issue is discussed within the application and ask a question in relation to it. The Commission sets deadlines for making information requests and for receipt of the utility's responses. To keep all participants fully informed, parties are responsible for circulating copies of information requests and responses to one another and to the Commission.

Preparing for the Hearing

There are two basic ways you can participate in the hearing process. The first approach is to provide the Commission with a clear statement of your position(s), concerns and interests regarding the utility's application. For example, a community group in the District of Mackenzie once sent a representative to appear before the Commission at a B.C. Hydro revenue requirement hearing. The group was concerned that an increase in the future demand for electricity could result in B.C. Hydro drawing down Williston Reservoir below the water level required for continued operation of the local pulp mill. A written submission was prepared and filed by the group in advance of the hearing, explaining to the Commission that the pulp mill was the primary source of employment for the town and that the community would suffer economic hardship if the mill closed. A member of the community also attended the hearing to present oral testimony, explain the community's concerns in person and respond to questions. In this way, the group's concerns were presented to the Commission without the assistance of technical experts or legal counsel.

The second approach involves demonstrating to the Commission that the utility's application is technically unsound, contrary to or inconsistent with legislation, regulations or the public interest. An intervenor may also propose alternatives to the utility's application. This approach requires a detailed analysis of the utility's application and technical materials, and some combination of information requests, filed written testimony and the cross-examination of utility witnesses. An obvious distinction between the two approaches is that the latter involves a very significant commitment of time and resources. In many cases, it may be helpful to retain legal counsel and the assistance of a technical expert to perform many of the tasks involved in this approach or combine with other parties with similar interest who can undertake these tasks for you.

Written Testimony

In oral hearings before the Commission, the applicant and registered intervenors generally provide written testimony to the Commission and the other parties prior to the commencement of the oral hearing. The deadline for submitting material is set out in the Hearing Order and Notice of Public Hearing. The general purpose of this material is to establish positions and facts that the intervenor intends to rely on at the hearing. For example, an intervenor may hire an expert to testify about a particular issue raised by the utility application. The expert would file written testimony in advance, usually in a question and answer format, as if the person were being interviewed. This material is then filed as the testimony of the expert at the hearing. The submission of written testimony is not a mandatory requirement for full participation in the hearing. It is, however, the most effective way of presenting your own evidence.

Other groups and individuals may want to make a less formal presentation to the Commission at the oral hearing on issues that are of particular interest to them. The Commission regularly receives written statements of this nature prepared by the groups and individuals themselves. To assist those participating in the hearing to prepare in advance, it is necessary to provide these written statements by the deadline for written submissions.

Sometimes individuals and groups do not wish to participate in the oral hearing but would still like the Commission to be aware of their interests. This can be done by sending a written statement to the Commission by the deadline for written submissions.

When you file written material with the Commission, you are also responsible for providing a copy, prior to the deadline for written submissions, to the applicant utility and the other intervenors who have registered as participants in the hearing. It is important to meet the deadline to give the other hearing participants time to consider your material in advance of the hearing.

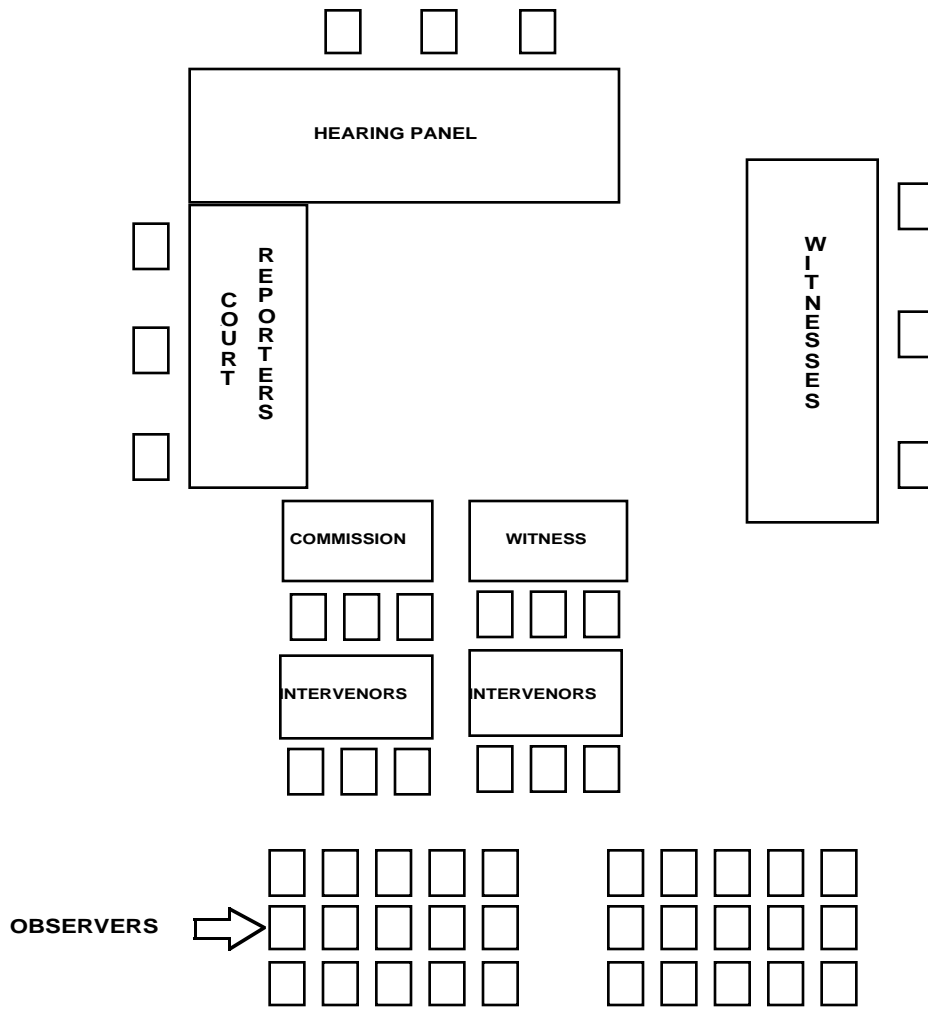
The Public Hearing Process

Commission hearings are normally held at a location within the service area of the utility. In the case of B.C. Hydro and BC Gas, hearings are usually held at the Commission's offices in Vancouver. Hearing days are usually five to six hours in length, unless circumstances require extended hours, as is often the case outside of Vancouver. The date, commencement time, and location of the hearing are contained in the Notice of Public Hearing.

Commission counsel and Commission staff assigned to the hearing are responsible for coordinating the order of witness panels and cross-examination. If an intervenor's witnesses are likely to have scheduling constraints during the hearing, it is recommended that they call the Commission in advance of the hearing so that their constraints can be accommodated.

Given that hearings are the primary mechanism for public participation in Commission decision-making, this section of the Guide reviews the basic components of a public hearing to help the reader follow the process.

Figure 4-1
TYPICAL HEARING ROOM FORMAT



Summary of Usual Stages of an Oral Hearing for a Utility Application		Table 4-1
1.	Commission Panel Opening Statement;	
2.	Registration of Appearances and Filing of Exhibits;	
3.	Preliminary Issues, if any;	
4.	Applicant Witness/Panel Affirmed;	
5.	Applicant Opening Statement, if any;	
6.	Intervenor Cross-Examination;	
7.	Commission Counsel Cross-Examination;	
8.	Commission Panel Questions;	
9.	Redirect of Applicant Witness/Panel, if any;	
10.	Other Applicant Witness/Panel (repeat steps 4-9);	
11.	Intervenor Witness/Panel (repeat steps 4-9);	
12.	Applicant Final Argument;	
13.	Intervenor Final Argument;	
14.	Reply Argument; and	
15.	Commission Order and Written Reasons for Decision.	

The Intervenors

First time intervenors before the Commission will quickly discover that they are not alone. Residential ratepayer groups and industrial ratepayer groups consistently intervene in Commission hearings. Environmental groups and independent power producers are among the group of regular intervenors, and there are a few dedicated individuals who regularly intervene as active participants or observers. Local governments and community groups also intervene to address issues that affect their community. In addition, private energy consultants often participate. The Commission welcomes participation from the commercial sector as well. Overall, the hearing process accommodates participants of a wide variety of relevant experience and resources. Participants often choose to retain legal counsel, but legal representation is not required, and many intervenors represent themselves.

The Public Hearing

As noted previously (Chapter 3, Hearing Format, p. 18), the Commission may decide to have an oral or a written hearing. If the hearing is written, the final stage of the hearing process, following the exchange of information requests and filing of written testimony, is the filing of written submissions by the utility and registered intervenors. The written submission, like a final written argument, should set out the intervenor's positions on the utility's application – what it wants the Commission to decide – and its arguments to support these positions.

The majority of the Commission's hearings are oral. These oral hearings are structured on the court system, but are less formal. The primary purpose of the oral hearing is to question witnesses who have the knowledge to answer detailed questions about the application and written testimony that have been filed with the Commission. At the end of the hearing the Commission often asks for written, rather than oral argument. The following sections provide a summary of the hearing process and a more detailed discussion of the basic elements of an oral hearing. (See Table 4-1, p. 30; Table 4-2, p. 33, Chapter 4.)

Overview of the Oral Hearing Process

Commission hearings are ordinarily heard by a panel of two or three Commissioners, one of whom acts as Chairperson. Commission proceedings are recorded by a court reporter, who then prepares written transcripts of everything that is said in the course of the hearing. For this reason, participants speak into a microphone when addressing the Commission.

Oral Testimony

In the courts, witnesses ordinarily give evidence orally through "direct examination" by their legal counsel (i.e., the lawyer asks the witness questions, and the witness answers them under oath). Because of the complex and technical nature of much of the evidence presented to the Commission at a hearing, it has largely dispensed with the need for direct examination in favour of written testimony filed in advance of the hearing. The primary role of witnesses at Commission hearings is to be cross-examined on their written testimony by the other participants, Commission staff and the Commission panel. Before witnesses testify they are asked to affirm that any written or oral evidence given will be the truth. The witness is then asked to adopt his or her written testimony as his or her testimony at the hearing, and given the opportunity to make a brief opening statement. The Commission will make allowances for intervenors who wish to appear without counsel and state their concerns before the Commission, and intervenors are encouraged to be concise and file statements in advance. Commission counsel may also assist an intervenor who requests it.

Cross-Examination

Once witnesses have made their opening statement, the other participants, Commission staff through counsel and then the Commission panel are given an opportunity to ask the witnesses questions on the application or their written or oral testimony. It is important to note that cross-examination of witnesses is not the stage in the process for stating one's interests to the Commission. This may be done by filing written testimony, taking the stand and making a short presentation to the Commission, as well as summarizing later in final argument. The purpose of cross-examination is to identify errors or confirm facts that serve to reinforce the concerns and interests that you have about the utility's application.

Redirect Examination/Rebuttal Evidence

After cross-examination of a witness or panel is completed, the participant who put up that witness or panel may ask the witness questions to clarify points that were raised during cross-examination. This is called redirect examination.

Participants are also given an opportunity to submit rebuttal evidence if any witness gives evidence during the hearing on an issue which had not been anticipated. The filing of rebuttal evidence is not a common occurrence in Commission hearings because the applicants are able to determine in advance of a hearing, through information requests, the range of issues likely to be brought forward.

Final Argument

Once all the testimony and cross-examination has been completed, the utility and intervenors have the opportunity to make final arguments based upon the evidence presented in the course of the hearing. Whether this argument is written or oral is decided by the Commission panel presiding at the hearing. In most cases, written argument is required. The utility has the right to a "reply" or a written response to the written arguments filed by intervenors. In some cases, such as a generic hearing, intervenors are also given an opportunity to submit an argument in reply.

The Decision

Once the public hearing has been adjourned, the Commission panel reviews the filed evidence and arguments and issues an order with a decision giving reasons for the order. Under the *Utilities Commission Act*, the Commission has been given quite broad powers to ensure that its decisions are complied with.

More Detailed Description of the Hearing Stages

Table 4-2

- At the commencement of a hearing the Commission Chairperson gives an opening statement outlining the purpose of the hearing.
- The applicant utility registers its "appearance" for the record, and files its affidavit of publication, application, and supporting documents as exhibits.
- Intervenors register their appearances and enter their written testimony as exhibits.
- If there are any preliminary issues, the Commission deals with them before any witnesses are called.
- The utility calls its witnesses to provide oral testimony regarding the evidence filed in the utility's application.
- The utility's witnesses are affirmed and can make a brief opening statement.
- The utility's witnesses are then available for cross-examination by the intervenors, Commission counsel and the Commission panel.
- When cross-examination is completed, legal counsel for the utility is allowed to "redirect" the witness; that is to ask the witness questions in order to clarify statements made by the witness during cross-examination.
- In a similar manner as the utility, intervenors may make opening statements immediately prior to their evidence, offer their witnesses for cross-examination and the utility, other intervenors, Commission counsel and the Commission panel may then ask them questions about their written testimony. It is not required that intervenors offer witnesses, they are still free to ask questions of the other participants who do provide witnesses and they are still able to make final argument. If an intervenor wishes to have the Commission consider alternatives to the utility position, presentation of evidence in support of those alternatives is useful.
- The intervenor has an opportunity to ask its witnesses questions on redirect.
- After all witnesses have been presented, the applicant utility and intervenors present their final arguments. On completion of these arguments, the applicant utility has the right to make a reply argument.
- Witnesses at hearings are often organized into panels. For example, at a revenue requirement hearing the utility may provide a panel of several witnesses to address policy issues.
- Individual intervenors may organize their witnesses into panels to make the process more efficient.
- The order of intervenor panels and the order of cross-examiners is coordinated by Commission counsel in consultation with the intervenors.

Reconsideration and Appeals

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. 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. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

Commission Reconsideration

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Court of Appeal for British Columbia

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

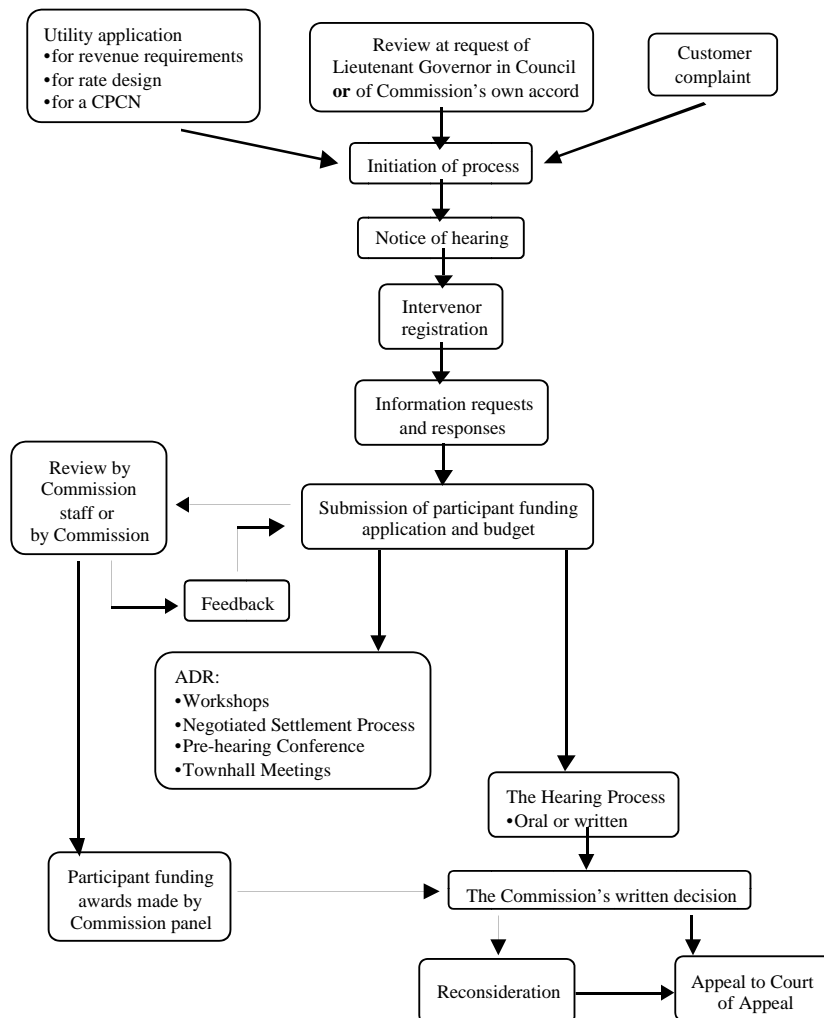
An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

The Ombudsman

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.

Figure 4-2
OPPORTUNITIES AND MECHANISMS
FOR PARTICIPATING IN COMMISSION ACTIVITIES



CHAPTER 5

Rate Making

- **Introduction**
- **Integrated Resource Planning**
- **Certificate of Public Convenience and Necessity**
 - **Rate Regulation**
 - **Incentive Regulation - Performance Based Regulation**
 - **Rate Design**

Introduction

Now that you are familiar with the general hearing process, you will need to know more about the types of applications the Commission deals with so that you can determine how your particular interest fits into the Commission's regulatory scheme. This chapter outlines the main elements of rate making, a key part of the Commission's utility regulation responsibilities.

The Commission is responsible for setting utility rates primarily under Sections 58-64 of the *Utilities Commission Act*. Public utilities apply to the Commission when they want to change rates. The Commission reviews the application and decides whether a rate change is justified. Like any business, public utilities expect to be able to recover the cost of providing service to their customers plus a reasonable profit. The task of the Commission is to ensure that public utilities make a reasonable return on their investment while providing secure service at fair, just and reasonable rates. This involves examining the energy resource alternatives, including demand-side management options, identified by a utility in its long-term plan (IRP), the revenue requirements of a utility, a fair return to shareholders (return on equity) and how a utility's revenue requirement should be divided amongst its customer classes (rate design).

The Commission's review of the utility's application is conducted in the context of current information about the long-term plans of the utility, its recently approved capital projects and through public hearings to decide whether the requested increase is necessary. The Commission decides how much revenue the utility reasonably needs to cover the costs of providing service to its customers for the period covered by the utility's application, including how much the utility should earn for its shareholders' investment. The Commission can approve an "across-the-board" increase in rates, or a rate design hearing may be required to determine how much of the revenue required by the utility should come from each type of customer, based on the cost of providing energy service to that customer. Such a "revenue to cost ratio" is not stable over a long period of time, particularly if the costs and customer mix are changing. Therefore, rate design hearings are needed from time to time.

Typical electricity customer classes:

Table 5-1

- residential customers - who purchase service at the local distribution voltage level;
- commercial and general service customers - who may purchase service in large quantities or at local distribution voltage levels; and
- industrial customers - who purchase services in very large amounts or at transmission voltage levels.

Integrated Resource Planning

Integrated Resource Planning ("IRP") is a process by which a utility considers all known resources which could potentially be used to meet customers' demand for its product. Such resources include the traditional sources a utility uses to meet demand, such as new generation facilities, as well as conservation measures. In 1993, the Commission developed IRP Guidelines (see Appendix D).

The kind of information and analysis associated with an IRP will be used by the Commission under Sections 45 and 46 of the *Utilities Commission Act* in making determinations on applications for Certificates of Public Convenience and Necessity ("CPCN").

Certificate of Public Convenience and Necessity

Section 45 of the *Utilities Commission Act* provides that no person shall begin the construction or operation of a public utility plant or system without first obtaining from the Commission a certificate declaring that the facility is required to satisfy public convenience and necessity (i.e., that it is in the public interest). The purpose of this project review process is to ensure that utilities are not making unwise investments, the cost of which they will later expect to recover in rates from their customers. For example, upon closer examination the Commission may determine that it is more cost-effective for the utility to invest in energy conservation and avoid the necessity of building another generating plant. Therefore, an energy project that has received approval under the Environmental Assessment Act or Small Power Project Review Process still requires a CPCN from the Commission before construction can begin.

The Commission issues CPCNs with conditions attached. These conditions specify the scope of the project, its schedule and its expected costs. If these and other relevant conditions are met, the utility's cost of the project will be added to its rate base for recovery in rates. If, for reasons within the control of the utility, the conditions are not met, the Commission may deny cost recovery of all or part of the costs.

Rate Regulation

When the utility applies for an increase in rates to be charged to its customers, it must justify the revenue requirements that support the request for an increase. The primary costs associated with operating the utility are:

- the cost to build, operate and maintain the utility's facilities;
- the cost to finance debt incurred from building these facilities;

- depreciation and amortization expenses;
- the costs of financing debt generally; and
- return on shareholders' equity including the resulting income taxes.

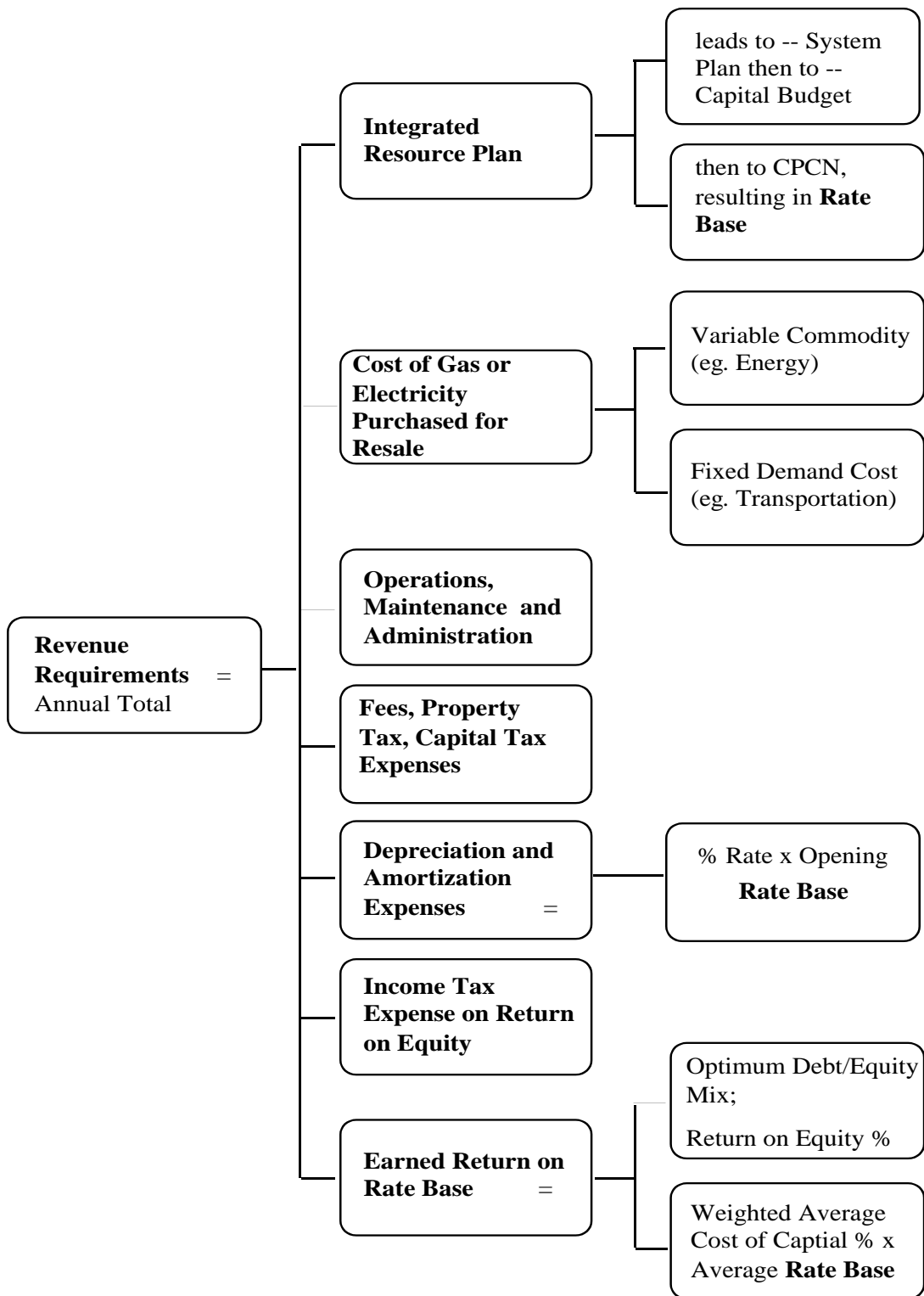
The Commission uses a "future forecast" methodology to review utility expenditures. This means that utilities apply for rate increases prospectively, to cover expenses that they expect to incur over a specified period in the future, called the "forecast test year" period. The term "test year" refers to a typical year, usually one, two or three years in the future. Once the total revenue requirements for the test period have been determined by the Commission, this total cost is divided by the annual forecast sales volume for this period to arrive at the average rate that the utility may now charge for its services. The utility's rate tariff is then amended to adopt the new rates. In determining a utility's revenue requirements, the Commission also examines the utility's rate base, or the assets on which a utility may collect a return. If the Commission decides that any of the costs claimed by the utility in its application are not reasonable or prudent, it may disallow the recovery of those costs in customer rates.

Figure 5-1, p. 41, demonstrates the connections between long range planning (IRP) and rate base and the linkage of rate base with depreciation and amortization expenses, return on equity and ultimately with total annual revenue requirements. Utilities are required to present their revenue requirements in a set of "regulatory schedules" in the executive summaries of their applications as well as in their annual public reports to the Commission. These schedules are included in the appendices of the Commission decisions for the respective utility.

Incentive Regulation - Performance Based Regulation ("PBR")

Traditional cost of service regulation discussed in the previous section has been criticized in recent years. According to the Commission's traditional method of regulating utility rates using cost of service analysis, the amount of revenue which a utility is permitted to earn is approximately equal to its costs. Revenue requirements and rates are set every year or two years based on a forward test-year (or test-years) basis. Critics argue that, using this system, utilities have insufficient incentives to operate as efficiently as they would in the competitive market place. Because a utility may recover cost increases simply by demonstrating a higher revenue requirement, a utility has little reason to strive to become more efficient and, as a corollary, keep its costs low. Increasingly, the Commission is introducing mechanisms to streamline rate setting and implement incentives to utilities to trim costs while maintaining high quality service.

Figure 5-1
SUMMARY OF UTILITY COST COMPONENTS



Performance based regulation attempts to address inefficiencies. Two basic approaches to PBR have developed; price cap and revenue cap. A price cap system is an early version of the approach. Utility rates could be capped at, for example, several percentage points below the Consumer Price Index. If the utility were relatively efficient, it could then save as profit what it might have otherwise spent and sought to recover through customer rates. Under this approach there is a danger that a utility may cut costs devoted to maintenance or quality of service. The alternative of a revenue cap has also been attempted with mixed results.

The Commission has recently implemented performance based regulation for utilities such as BC Gas and West Kootenay Power. The approach approved by the Commission is designed to overcome the disadvantages of earlier versions. Key components of PBR usually contain some or all of the following:

- A baseline revenue requirement is set by cost category that can be modified for inflation, productivity and other factors in the future.
- An incentive mechanism is created, such as a sharing account whereby both customers and shareholders are rewarded for management's cost reduction measures that realize revenue requirements lower than the modified baseline.
- A quality control mechanism is established to ensure that the utility does not pursue cost savings at the expense of system reliability, safety, customer satisfaction or other measure of quality including energy efficiency.
- Demand-side management - energy management services are encouraged by the removal of disincentives and the addition of positive incentives for the cost effective achievement of verified energy and capacity savings.

Return on Equity

Public utilities turn to private investors when they need to raise the money for capital projects. Naturally, these private investors, or shareholders, want a return on their investment. As part of its rate making function, the Commission must decide a fair compensation to these shareholders to be recovered from utility customers in rates. This cost is referred to as the allowable return on equity ("ROE").

For most utilities in B.C., ROE is presently determined on a generic basis. A common benchmark was established at a public hearing with the assistance of witnesses who are experts in financial markets. The general methodology is to forecast the risk-free rate of long-term Government of Canada Bonds and to determine a specific risk-premium for each energy utility within B.C. The ROE percentage is the composite of the risk-free and risk-premium percentages. Other tests may be reviewed as checks on the appropriateness of the ROE determination. This generic approach saves time and money and establishes a common baseline from which the risks of a specific utility may be determined. The ROE mechanism provides for an annual review and adjustment.

The utility also needs to recover interest expenses on its debt. The ROE percentage and the debt interest percentage are combined into an "earned return percentage" according to the proportion of plant and equipment (rate base) financed by debt or equity. This percentage is multiplied by the amount the utility has invested in its rate base, to determine the amount of earned return to be included in the revenue requirement. (See Table 5-2 for an example.)

Table 5-2

<u>RATE BASE</u>		
Working Capital	\$150,000	
Plant	300,000	
Equipment	<u>550,000</u>	
Total Resources Financed	\$1,000,000	
CAPITAL STRUCTURE:		
Total Debt	\$600,000	60% of the total
Total Shareholders' Equity	<u>400,000</u>	40% of the total
Total Sources of Money	\$1,000,000	
Average Cost of Debt	9%	
Return on Equity	11%	

Therefore, a weighted Average percent cost would be $(9\% \times 60\%) + (11\% \times 40\%)$ or 9.8%. $9.8\% \times \$1,000,000$ is the earned return of \$98,000 required to pay both the creditors and the shareholders for the use of their money. Rates must also include an amount sufficient to pay income taxes on the Return on Equity.

Rate Design

If the utility's revenue requirement can be thought of as a "pie", then rate design cuts the pie into slices that represent the cost of serving each class of customer - residential, commercial and industrial. Different customer classes place different demands on the utility system. As a result, the cost of serving each customer class may also differ. The purpose of rate design is to make sure that each class pays its fair share of the overall cost of providing service.

A rate design hearing has two primary aspects: the review of the utility's cost of service study, and the review of the actual charges and fees that the utility wishes to implement to recover its costs.

Cost of Service Analysis

In a non-regulated industry, each company sets its own price for its product, but it must also compete with other businesses for the same customers. In this context, price is one component of a company's marketing strategy, along with product differentiation, promotion and distribution practices. The more a company can charge, over and above its cost of production, the more profit it makes; however, it must be careful not to charge so much that it loses customers to its competitors. In this sense, the pricing system in a competitive market may be described as "self-regulating" as the need to compete for customers creates a downward pressure on prices.

In the utility industry, where prices are regulated, the utility submits to cost regulation in exchange for a fair return for providing services. The Commission determines specific prices for each class by first allocating the utility's costs (i.e., revenue requirements) to customer classes (residential, commercial and industrial); then it divides the costs for each class by its expected sales volumes to arrive at a price for each customer class. This process is called a "Cost of Service Analysis".

The allocation of the costs of service can be a contentious matter at rate design hearings. This controversy is understandable given the complexity of the task of assigning costs to different customer classes. Certain types of utility service can be directly associated with particular customers or customer classes, such as the service connection from the street to the house. Other services that cut across customer classes, such as power plants, transmission lines, distribution lines and transformers, are constructed and operated for the benefit of many customers. In addition, the administrative costs of the utility are not always associated with serving any particular customer. These shared costs must somehow be allocated among customers who share the use of the facilities. The allocation of these costs

depends on a number of assumptions. It is the task of the Commission to critically examine the underlying assumptions and methodologies used in preparing the cost of service studies that are filed by the utility in support of its rate application.

Rate Design Analysis

Having determined how much revenue a given class of customers should pay, the next step is to design rates which will produce the necessary level of revenues. Rate designs can be stable over several years, so a revenue requirement hearing is not always followed by a rate design hearing.

The principle criteria recognized by rate design experts¹ and considered by the Commission in evaluating rate structures are that rates should be:

- simple and understandable to the customer;
- cost-based, or tied to actual services provided;
- efficient;
- stable and predictable; and
- non-discriminatory.

Typically, utility rates include a "customer charge" and an "energy charge". Rates for large customers may also include a "demand charge". The "customer charge" is a fixed charge for each month in order to be connected to the utility's system and have access to service. It is typically designed to cover the costs of meters, service connections, meter reading, and billing.

The "energy charge" is the price for each unit of electricity or gas that is consumed. For small customers, this charge recovers all of the costs not included in the customer charge. These include production, transmission, and distribution costs, plus administrative costs, taxes, employee benefits, and so forth. A typical rate for a residential or small commercial customer might be as follows:

Customer Charge (per month):	\$	X.XX
Energy Charge (per kwh, per GJ):	\$	Y.YY

A "demand charge" is imposed on customers whose energy usage contributes to the need for the utilities to build more "capacity" to meet demand, such as adding peaking power plants, increasing the size of transmission lines, and installing larger transformers. At present, only large commercial and industrial

¹ Notably James C. Bonbright, Albert L. Danielson, and David R. Kamerschen as explained in Principles of Public Utility Rates, Public Utilities Reports Inc., Arlington, Virginia, 1988.

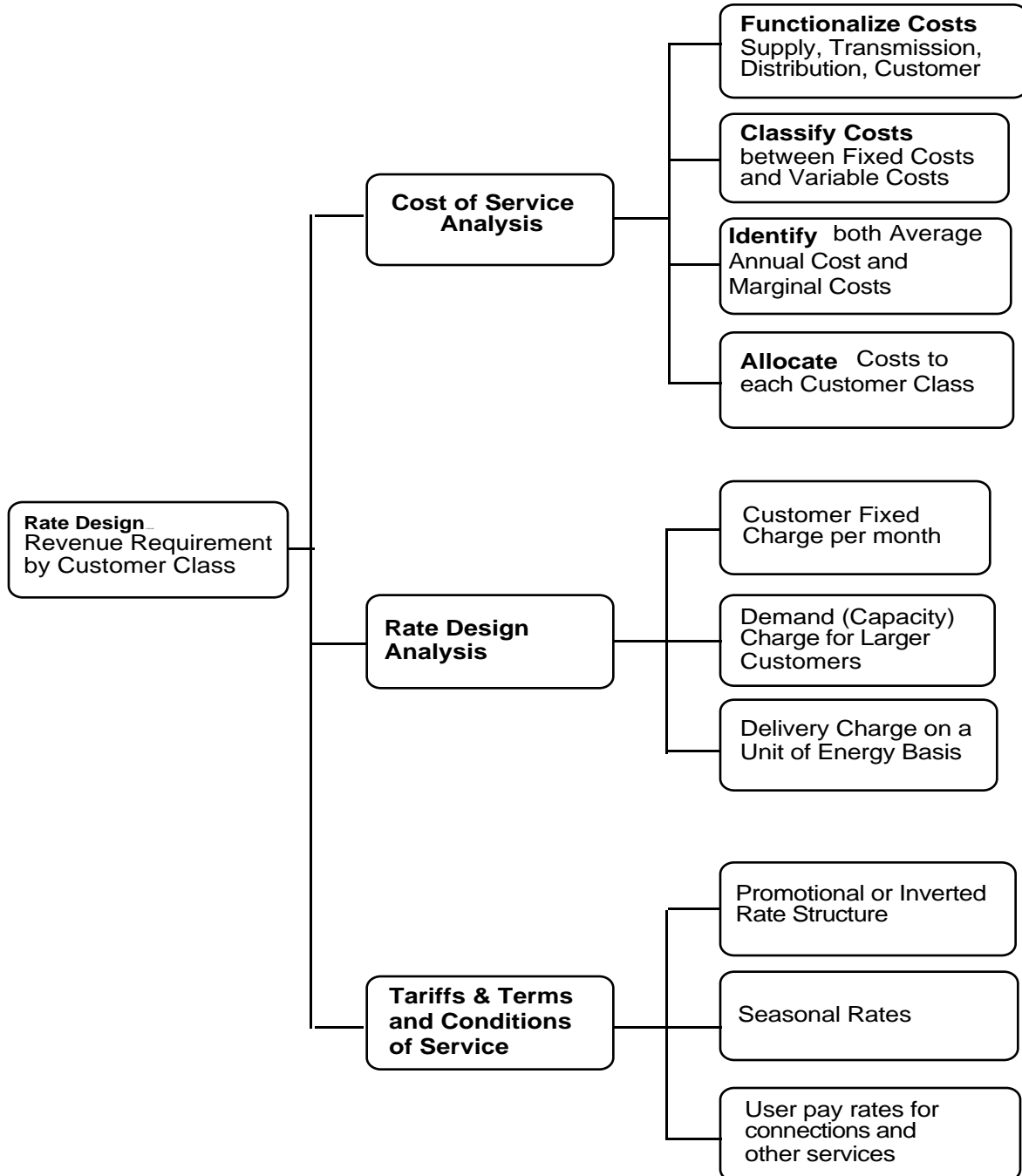
customers pay a demand charge. For large commercial and industrial customers, dual-register meters are installed to measure both the energy usage and the maximum rate at which energy is used during a month. These customers pay both a demand charge (based on their highest demand) and an energy charge (based on their kilowatt-hour or gigajoule usage). A typical rate for a large commercial customer might be as follows:

Customer Charge (per month):	\$	X.XX
Demand Charge (per kilowatt, per peak GJ):	\$	Y.YY
Energy Charge (per kilowatt-hour, per GJ):	\$	Z.ZZ
(1 GJ = 278 Kilowatt-hours)		

Larger customers usually pay somewhat lower rates, because they do not require as much investment in distribution facilities as a group of smaller customers using the same amount of power. The largest industrial customers in British Columbia receive their power directly from the high-voltage transmission lines, and pay significantly lower rates than smaller customers who use power at lower voltage, because the small customers must pay for the distribution lines and maintenance of those lines in their rates.

Figure 5-2 demonstrates the linkages between the major steps in rate design. The point to remember is that the Cost of Service can only be recovered by charging specific classes of customers for the volumes they demand at the rates in the approved tariffs. If costs are routinely over or under recovered then the difference can become significant and a rate design application to make the necessary adjustments is required.

Figure 5-2
KEY COMPONENTS OF RATE DESIGN



CHAPTER 6

Overview of Other Institutions Involved in Energy Regulation

- **Federal Government**
 - **Provincial Government**
 - **Role of Municipal Governments/Ministry of Municipal Affairs**

A general understanding of the government institutions involved in energy regulation and their respective responsibilities is useful to anyone interested in becoming actively involved in energy issues. One of the first issues to consider is which government department or organization has the authority to address a particular problem. In this way, the participant can avoid wasting often limited time and resources asking for remedies that can only be obtained in another forum. This chapter provides a limited overview of those related institutions and agencies as we understand them. For more detailed information, the reader may wish to contact the particular agency directly.

Federal Government

The Constitution sets the parameters of the regulatory powers available to each level of government to regulate energy. The governments themselves decide whether and how they will exercise these powers by adopting legislation and establishing the appropriate institutions to implement it.

Acknowledging that the provinces are primarily responsible for matters related to energy within their territorial boundaries, the federal government's direct intervention in the energy field is basically restricted to exports and interprovincial trade. Other federal legislation and agencies, however, indirectly play an important role in the regulation of energy.

The National Energy Board ("NEB")

The NEB was created under the *National Energy Board Act* in 1959 to advise the federal government on the development and use of energy resources, and to regulate oil, natural gas and electricity with respect to those matters within the federal government's constitutional jurisdiction. The primary regulatory responsibilities of the NEB are:

- issuing certificates of public convenience and necessity for the construction and operation of international and interprovincial oil and natural gas pipelines and electricity power lines;
- licensing the export of electricity, oil and natural gas;
- licensing the import of natural gas; and
- regulating the tolls charged by natural gas and oil pipeline companies engaged in interprovincial or international trade.

Canadian Environmental Assessment Agency

In 1995, the *Canadian Environmental Assessment Act* ("CEA Act") came into force. This legislation replaces the Federal Environmental Assessment Guidelines and establishes the process for reviewing the environmental effects of projects that fall within the jurisdiction of the federal government. The Canadian Environmental Assessment Agency is responsible for implementing the CEA Act.

Section 5 of the CEA Act provides that a federal environmental assessment of a project is required where a federal authority:

- is the proponent of the project;
- is providing financial assistance to a project;
- is disposing of federal lands for a project; or
- is issuing a permit or approval to a project proponent that is included in the *Law List Regulation* issued pursuant to Section 59 of the CEA Act.

Four sets of regulations have been passed to further refine and clarify the scope of the application of the CEA Act. These are the *Inclusion List Regulation*, the *Law List Regulation*, the *Exclusion List Regulation* and the *Comprehensive Study List*.

The *Inclusion List Regulation* expressly identifies classes of projects that fall within the scope of the CEA Act. The general categories for inclusion include: Oil and Gas Projects, Nuclear and Related Facilities, Fisheries and Wildlife.

The *Law List Regulation* identifies the statutory and regulatory permits and approvals that trigger an environmental assessment. Several of the permits specifically included on this list are relevant to energy production and use. For example, Section 35 of the *Fisheries Act* (which requires a project proponent to obtain authorization from the Department of Fisheries and Oceans before affecting fish habitat) is on the list.

The *Exclusion List Regulation* identifies projects that are not required to undergo an environmental review either because they have insignificant environmental effects or because federal involvement is minimal. In the energy sector, the exclusion list sets thresholds for the review of the construction, expansion or modification of electrical transmission lines, switching stations and nuclear facilities.

The *Comprehensive Study List* identifies projects assumed to have adverse environmental effects. These projects automatically require a much deeper analysis than the "initial screening" ordinarily conducted to determine whether a project warrants a full-scale environmental assessment. The *Comprehensive Study List* includes several entries that relate to energy projects, such as the construction, expansion, decommissioning or abandonment of:

- fossil fuel-fired or hydroelectric generating stations with a production capacity of 200 MW or more; and
- dams or dykes with a reservoir surface area greater than 1500 hectares or more.

In many cases, energy projects trigger the requirements of both federal and provincial environmental assessment legislation. The CEA Act and the B.C. Environmental Assessment Act provide for a joint federal-provincial review to address this situation.

Department of Fisheries and Oceans ("DFO")

The DFO administers the *Fisheries Act*. Hydroelectric projects are most obviously affected by the *Fisheries Act* and its prohibition against any harmful alteration, disruption or destruction of fish habitat without government authorization. DFO is invariably involved in the approval of hydroelectric projects to ensure that fish habitat is not adversely affected.

Environment Canada

Constitutional jurisdiction to regulate the environment primarily belongs to the provincial governments. Environment Canada is involved in developing federal policies on environmental issues and presenting Canada's position on issues in international environmental treaty making. The implementation of environmental law and policy, however, ordinarily cannot be achieved without the cooperation of the provinces. For this reason, Environment Canada and related organizations like the Canadian Council of Ministers of the Environment must solicit the cooperation of the provinces to fully implement most policies as legislation. Environment Canada has been most active in this regard in the area of air emissions, establishing a multi-stakeholder committee to advise the federal government on developing a national strategy for addressing the federal government's international commitments to reduce air emissions such as greenhouse gases.

Another role of Environment Canada is the administration of the *Canadian Environmental Protection Act*, which takes a life cycle approach to controlling the introduction of toxic substances into the environment.

Natural Resources Canada ("NR Can")

NR Can comprises the former Department of Energy, Mines and Resources ("EMR") and the Department of Forestry. Natural Resources Canada has inherited responsibility for developing federal energy policies. It also conducts economic and financial research and analysis of Canada's energy resources, maintains a database of energy-related statistics, and represents the federal government in international forums related to energy. It shares responsibility for regulating the nuclear industry with the Atomic Energy Control Board. NR Can periodically publishes information useful to the public, such as *Electric Power in Canada*, a comprehensive review of the Canadian electric power industry.

Industry Canada - Competition Bureau ("the Bureau")

At present, the Competition Bureau does not play a role in energy regulation in British Columbia. In the event that competitive energy markets are established in the province, however, the Bureau would become involved in facilitating the transition from a monopoly structure and in enhancing the potential economic benefits from the new competitive markets. The Bureau's function is to administer the *Competition Act*, which is a federal statute whose purpose is to supplement market forces to prevent anti-competitive practices. For example, the *Competition Act* contains criminal and non-criminal provisions to censure activities such as conspiracy, bid rigging, price discrimination, and misleading advertising.

Provincial Government

The following provincial government ministries, branches and agencies have mandates that may relate to the B.C. Utilities Commission.

Environmental Assessment Office ("EAO")

The Environmental Assessment Act was proclaimed in 1995, replacing the Major Project Review Process, the Energy Project Review Process, and the Mine Development Assessment Process. The Environmental Assessment Office ("EAO") essentially consolidates these processes to provide a single review process for all major projects. The EAO may apply to the following range of energy projects depending on their threshold size:

- power generation plants;
- electric transmission lines;
- energy storage and shipment facilities;
- oil and gas pipelines;

- energy conversion facilities;
- plants to make, process or store ethanol, methanol, hydrogen or methyl tertiary butyl ether; and
- offshore oil and gas development.

Ministry of Energy and Mines

Oil and Gas Commission

The Oil and Gas Commission manages the exploration and production operations of British Columbia's oil, gas and geothermal resources. The Commission provides an integrated approach to the management and regulation of the oil and gas industry to meet economic, environmental and social objectives. The Commission has a special role in establishing positive working relationships with First Nations, facilitating participation in processes affecting their interests and in helping to promote First Nations community development. It provides a single window for the management and regulation of 'upstream' oil and gas activity in the province, has statutory authority and encompasses responsibilities formerly carried out by branches within the Ministries of Energy and Mines; Environment, Lands and Parks; and Forests.

Resource Development Division/Minerals, Oil and Gas Branch

The Minerals, Oil and Gas Branch develops strategies, policies and programs for the minerals, oil and gas sectors, and ensures their coordination with other resource management and broad government policy initiatives. These initiatives include mining, oil and gas taxation, royalty and other revenue collection policy, regulation of natural gas removals, interventions before federal and provincial energy regulatory agencies, domestic utility regulation policy, assessments of mining, oil and gas projects and related infrastructure, strategic mineral, oil and gas studies and economic analyses, and collection and dissemination of mineral, oil and natural gas statistics.

Ministry of Employment and Investment

Economic Development Division/Electricity Development Branch

The Electricity Development Branch is involved in several initiatives that address economic development with respect to electricity resources in British Columbia. Key functions of the Branch include administration of the *Power for Jobs Development Act*, Columbia River Treaty operations, downstream benefits and dispute resolution; electricity Energy Removal Certificates; analysis of electricity market restructuring and power export opportunities; administration of the *Utilities Commission Act* as it relates to electricity sector issues; participation in Environmental Assessment Office reviews of projects with electricity generation, transmission and use implications; management responsibility for the joint federal-provincial-B.C. Hydro Water Use Plan program; and, participation in various federal-provincial working groups on reliability, greenhouse gases, etc. The Branch also has responsibility for the ongoing administration of the Clean Choice Program (natural gas conversion assistance program) for Vancouver Island and the Sunshine Coast; and the *Energy Efficiency Act*, which regulates the efficiency of various types of equipment.

Ministry of Environment Land and Parks

The Ministry of Environment, Lands and Parks develops and advises the government on environmental policy regarding air, water, wildlife, land, waste disposal and pesticide use. It also administers environmental legislation including the *Water Act*, *Environmental Management Act*, *Waste Management Act*, *Environmental Assessment Act*, and the *Wildlife Act*.

Water Management Division/Water Rights Branch

The Water Rights Branch of the Water Management Division of B.C. Lands manages the supply and use of water in the Province consistent with the terms of the *Water Act*. Under the *Water Act*, any person who intends to use, divert or store water from a river or stream for the purpose of generating power must apply to the regional water manager of the Water Management Division for a water licence and water rental approval. The regional water manager has the discretion to impose conditions on a licence to ensure that the water is shared fairly between competing water uses.

Crown Corporations Secretariat

The Crown Corporations Secretariat monitors the efficiency and effectiveness of the province's Crown Corporations, and ensures that broad policy objectives are being met through these corporations. To this end, the Crown Corporations Secretariat has issued *Multiple Account Evaluation Guidelines* to the Crown corporations it supervises, including B.C. Hydro. These Guidelines are to be followed by B.C. Hydro in the development of its corporate strategic plan. The Guidelines are designed to ensure that the Crown corporations give explicit consideration to the social and environmental as well as the strictly financial costs of their operations.

Role of Municipal Governments/Ministry of Municipal Affairs

Under the *Utilities Commission Act*, a municipality that generates or distributes energy within its own boundaries is not considered a public utility, and, therefore, is not regulated by the Commission. Municipalities which service electricity needs within their boundaries include New Westminster, Penticton, Kelowna, Nelson, Summerland and Grand Forks. The City of Nelson generates some of its own power and purchases the balance of its power needs wholesale for resale to its customers. The others rely solely on wholesale purchases.

Municipal governments will play a role in energy planning by participating in community energy management and being responsible for land use planning. Municipal planning and land use decisions have a significant impact on energy consumption.

GLOSSARY & ACRONYMS

average megawatt	The average quantity of megawatts flowing over a specified time period. For example, over the course of one year, an average megawatt is equal to 8,760 megawatt-hours.
avoided cost	A benchmark price for energy services, used to compare resource alternatives. Avoided cost is the marginal long-term or short-term production cost which could be avoided by an alternative supply-side or demand-side resource.
baseload demand	The minimum demand for energy over a given period.
baseload supply	The supply source for energy used to meet baseload demand. Generally, baseload resources have high fixed costs and low variable costs relative to peaking resources.
capacity	The maximum amount of energy that can be instantaneously produced or transported by a facility.
capacity sale	A wholesale energy transaction which provides energy to meet peak load.
capital cost	The fixed costs associated with the construction of an energy facility, including land and siting costs, material and labor costs, and interest on funds borrowed for construction.
carrying capacity	The maximum capacity of a transmission facility under specified conditions. The carrying capacity of an electrical transmission line can vary significantly depending on ambient temperature, physical structure, and instantaneous power flow characteristics.
combined cycle combustion turbine	An electric generating plant (usually fired by natural gas) which combines a combustion turbine with a back-end steam turbine. Combined cycle plants are more complicated and expensive than simple cycle combustion turbines, but are much more efficient.
cogeneration	The generation of electric power in conjunction with the use of steam in an industrial or space heating process, using waste heat from one process to drive the other. When designed properly, cogeneration is extremely efficient compared to typical thermal generating plants.
debt-equity ratio	The ratio of money borrowed by the utility to money invested in the utility by stockholders. There is a theoretical optimum for this for each utility.
debt service	Repayment of principal and interest on loans to a utility.
declining block rates	A rate structure for energy which rewards higher consumption by reducing unit energy prices as consumption increases above a specified range.
decremental cost	The short-term cost of producing a marginal unit of energy which could be avoided by reduced demand or alternative supplies. Decremental cost can be considered as a subset of avoided cost. Avoided cost considers both fixed and variable life-cycle costs, while decremental cost is simply the variable operating cost at an existing energy facility.

demand-side management	Efforts to modify customer demand patterns by either increasing end-use energy efficiency or reducing fluctuations in energy demand.
"DSM" dispatch	The process of monitoring and coordinating the real-time sequence of resources which are used to serve constantly fluctuating energy loads.
distributed generation	Generation that is relatively small scale and located close to the final customer.
distribution	The portion of an electric or natural gas transportation infrastructure that connects end-users to bulk production or transportation facilities.
embedded cost	The average total cost of existing assets, including both fixed and variable costs.
energy losses	Energy lost during transportation from suppliers to end-users. Energy losses on a typical natural gas system are around 1%-2%. Energy losses on a large electric system are around 5%-8%.
export sales	Bulk sales of electricity or natural gas outside of British Columbia.
externalities, external costs	The environmental and social costs of energy production which are outside of, or <i>external to</i> , typical financial calculations of cost and benefit. These costs are often difficult to quantify. However, in many cases, the effects of energy production on health, environmental quality, and society are extremely large.
firm capacity	The amount of instantaneous energy production or transportation capacity that is guaranteed to be available at a defined time.
firm energy	The amount of energy or power that is guaranteed to be available over a defined period of time.
fixed cost	Costs associated with an energy production or transportation facility which must be paid whether the plant operates or not. Fixed costs generally include capital costs, routine maintenance, contract demand charges and labor costs.
fuel conversion efficiency	The ratio of useful end use energy to the total energy value of a fuel source. Typical efficiencies for steam turbines are in the range of 30%. Typical efficiencies for combustion turbines are in the range of 45% and much higher for combined cycle plants like district heating. Typical efficiencies for gas furnaces are in the range of 70%.
geothermal energy	Heat energy from rocks, hot water and steam in the earth's crust.
heating degree days	A measure of how cold the weather is relative to a comfortable indoor temperature, over the course of a year.
hydroelectric energy, hydroelectricity	Electric energy produced by water falling through a turbine generator. In British Columbia, hydroelectricity is the dominant form of electric energy production.
independent power producers ("IPPs")	Non-utility electric energy generators. Until the early 1970s, independent power producers were rare. With recent changes in utility technology and economics, they have become more common. Many issues relating to restructuring of the utility industry involve the role of independent power producers in an deregulated energy market.

interruptible energy	Energy flow which can be reduced or cut off on relatively short notice (usually hours to days) when needed by other customers. Generally, interruptible energy is sold by contract at a reduced price to end-users, with specific terms and conditions governing interruptibility rights.
investor-owned utility	An electric or gas utility that is owned by private shareholders.
kilovolt	1,000 volts.
kilowatt-hour	1,000 watt-hours.
least-cost resource mix	The combination of energy resource supply and energy efficiency investments which minimize the total cost of delivering end-use energy services.
levelized cost	A methodology that allows direct comparison of diverse energy options by reducing cost streams over the life of a project to a standardized series of equal, periodic payments.
life-cycle cost	The stream of capital, operating and disposal costs associated with an energy project over the entire life of the project.
load	The amount of energy required by end-users on a given portion of the system at a given time.
load-resource balance	The point at which demand for energy exactly equals energy production.
load growth	Increase in the demand for energy.
local distribution company	A utility (natural monopoly) that owns and operates the local delivery network for commodities such as electricity, natural gas and water. In a vertically integrated utility, local delivery is just one of several functions (e.g., B.C. Hydro). Thus, an LDC only exists when the delivery function has been vertically de-integrated (e.g., BC Gas).
marginal energy cost	<p>Over the short term, the incremental cost of producing and/or transporting one additional unit of energy, usually the short-term variable cost of the most expensive operating resource.</p> <p>Over the long term, the life-cycle cost of producing and/or transporting one additional unit of energy to meet load growth, using the most expensive new resource required.</p>
megawatt "MW"	1,000 kilowatt-hours, or 1,000,000 watt-hours.
minimum generation	The minimum level of operation that must be maintained for a thermal plant to operate.
minimum operating pool	The lowest level at which a hydro reservoir can normally be operated.

natural monopoly	An industry whose market output is produced at the lowest cost when production is concentrated in the hands of a single firm. The term utility is sometimes applied synonymously with natural monopoly.
nominal cost, nominal dollars	The cost of an energy production or transportation resource expressed in terms of the year when the cost is incurred, without accounting for inflation or the time value of money (i.e., "dollars of the day".)
nonfirm energy	Energy available in excess of firm energy . The value of non-firm energy is generally heavily discounted, since its availability cannot be guaranteed. In a power system which relies heavily on hydropower, energy which is considered non-firm for long-term planning purposes may be considered firm power during a seasonal, annual or even multiple year surplus, depending on water and load conditions.
non-power impacts	Impacts from operation of a hydroelectric reservoir other than the generation of electric power. Includes flood control, recreation, fish and wildlife impacts, domestic water supply, navigation, commercial and industrial uses, and air quality
peak demand	The maximum demand for energy over a given period.
peak supply	The supply source for energy used to meet peak demand. Generally, peaking resources have low fixed costs and high variable costs relative to baseload resources.
petajoule ("PJ")	1,000,000,000,000,000 joules.
photo voltaic	An advanced renewable energy technology which converts sunlight directly into electricity.
postage-stamp rates	Uniform rates for customers of the same customer class, regardless of differences in the specific cost of serving each customer.
Powerex	The principal wholesale power marketing corporation in British Columbia. Powerex is a wholly owned subsidiary of B.C. Hydro.
real cost, real dollars nominal cost	The cost of an energy production or transportation resource expressed in terms of the value of money in a specified year. Unlike nominal costs, real cost calculations explicitly account for inflation and the time value of money, allowing direct comparison of different life-cycle cost streams.
real discount rate	The time value of money (usually synonymous with an expected rate of return on investment) net of inflation.
real time pricing	A new approach to pricing energy services. Instead of setting a single rate at periodic intervals, prices would fluctuate based on real time conditions, such as time of day or week, or the instantaneous spot market value of energy. While theoretically superior to the way energy rates are currently set, real time pricing is technically complex to implement, and requires real time information exchanges between customers, energy suppliers, and energy markets.
regional rates	Rates which are location-specific in order to reflect the different costs of serving customers in different locations.

reliability criteria	A standard of service availability established by a utility. Usually expressed in terms of the expected probability, frequency and duration of a system failure over time.
renewable resource	Energy resources which are based on a continuously replenished energy source, such as wind, water, solar, geothermal or continuous yield biomass.
reserve margin	Energy production or transportation capacity above and beyond expected maximum capacity requirements, available in reserve in case of unanticipated system failures or sudden increases in load. Expressed as a percentage above expected system requirements. Typical reserve margins for gas and electric utilities range between 10% and 20%.
retail competition	Permitting end-use electricity customers to contract directly with electricity suppliers for their electricity commodity, while continuing to deal with transmission and distribution utilities for the commodity delivery. The energy commodity is provided in a competitive market. Also referred to as retail wheeling.
retail rates	The unit prices charged to end-users for energy services.
secondary power	Non-firm power.
self-generation	Generation of electricity by a customer for part or all of its own load requirements.
simple cycle combustion turbine ("SCCT")	A combustion turbine consisting of a single jet turbine. While simple and cheap to build, SCCTs are much less efficient than combined cycle combustion turbines .
spot market	A real-time commodity market for immediate sale and delivery of surplus energy products. Natural gas spot markets operate on a timescale of days to weeks, while electric spot markets operate on a time scale of minutes to hours.
stranded assets	Utility costs which are at risk of not being recovered because the market price of new generation is less than the costs of existing plants.
thermal generation	Electric generation using a steam turbine or combustion turbine driven by biomass, fossil fuels, or nuclear power.
transmission grid, transportation grid	An interconnected system of energy transportation lines and associated facilities, used for bulk transfers of energy products.
transmission losses	See energy losses .
variable cost	Costs associated with an energy production or transportation facility which are directly proportional to usage. Variable costs generally include fuel costs, operation related equipment maintenance, and wear and tear on equipment.
vertical de-integration	Separation of a vertically integrated utility into its functional units either by formal divestiture of ownership or through separation into distinct and independent corporate entities.
watt-hour	A basic unit of electric energy consumption. One watt-hour is equal to

3,600 joules of energy.

wheeling

Delivery of electrical energy from a generator to a designated location.

wholesale competition

Requiring end-use electricity customers to purchase both the electricity commodity and its associated delivery service through their LDC (which may be integrated with transmission assets). The energy commodity is provided in a competitive market in which the only buyers are LDCs. Also referred to as wholesale wheeling.

wholesale rates

The unit prices charged to local distribution companies for bulk energy services.

CONTACTS

During the course of your experience as an intervenor, you will likely have many questions which this Guide does not answer. The following organizations may prove to be useful resources for further information and assistance.

The National Energy Board

311 - 6th Avenue S.W.
Calgary, Alberta
T2P 3H2
(403) 292-4800

The Ministry of Employment and Investment

The Ministry of Energy and Mines
7th Floor 1810 Blanshard Street
Victoria, B.C.
V8V 1X4
(250) 952-0262

The Environmental Assessment Office

2nd Floor 836 Yates Street
Victoria, B.C.
V8V 1X4
(250) 356-7479

The Association for Sustainable Energy Policy

407 - 884 Bute Street
Vancouver, B.C.
V6E 1W6
(604) 669-4845

**The Consumers' Association of Canada
(B.C. Branch)**

306 - 198 West Hastings Street
Vancouver, B.C.
V6B 1H2
(604) 682-3535

**Council of Forest Industries
of British Columbia**

1200 - 555 Burrard Street
Vancouver, B.C.
V7X 1S7
(604) 684-0211

Mining Association of B.C.

840 West Hastings Street
Vancouver, B.C.
V6C 1C8
(604) 681-4321

**The B.C. Public Interest Advocacy
Centre**

815 - 815 West Hastings Street
Vancouver, B.C.
V6C 1B4
(604) 687-3063

West Coast Environmental Law

1001-207 West Hastings Street
Vancouver, B.C.
V6B 1H7
(604) 684-7378

**Canadian Environmental
Assessment Agency**

Pacific Northern Regional Office
1150 - 555 West Hastings Street
PO Box 12071
Vancouver, B.C.
V6B 5N5

For additional contacts, **including contact persons at the Commission**, please call the Commission's Information Services Group at (604) 660-4700 or B.C. Toll Free at 1,800,663-1385.

APPENDICES

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**B Negotiated Settlement Process
Policy, Procedures & Guidelines**

C Participant Funding and Cost Awards

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**1996 UTILITIES COMMISSION RS CHAP. 473
UTILITIES COMMISSION ACT
CHAPTER 473**

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Definitions

1 In this Act:

"**appraisal**" means appraisal by the commission;

"**authority**" means the British Columbia Hydro and Power Authority;

"**commission**" means the British Columbia Utilities Commission continued under this Act;

"**compensation**" means a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly, and includes a promise or undertaking by a public utility to provide service as consideration for, or as part of, a proposal or contract to dispose of land or any interest in it;

"**costs**" includes fees, counsel fees and expenses;

"**distribution equipment**" means posts, pipes, wires, transmission mains, distribution mains and other apparatus of a public utility used to supply service to the utility customers;

"**expenses**" includes expenses of the commission;

"**petroleum industry**" includes the carrying on within British Columbia of any of the following industries or businesses:

- (a) the distillation, refining or blending of petroleum;
- (b) the manufacture, refining, preparation or blending of products obtained from petroleum;
- (c) the storage of petroleum or petroleum products;
- (d) the wholesale or retail distribution or sale of petroleum products;
- (e) the retail distribution of liquefied or compressed natural gas;

"**petroleum products**" includes gasoline, naphtha, benzene, kerosene, lubricating oils, stove oil, fuel oil, furnace oil, paraffin, aviation fuels, butane, propane and other liquefied petroleum gas and all derivatives of petroleum and all products obtained from petroleum, whether or not blended with or added to other things;

"**public hearing**" means a hearing of which public notice is given, which is open to the public, and at which any person whom the commission determines to have an interest in the matter may be heard;

"**public utility**" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or
- (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

- (c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,
- (d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,
- (e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances, or
- (f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*;

"rate" includes

- (a) a general, individual or joint rate, fare, toll, charge, rental or other compensation of a public utility,
- (b) a rule, practice, measurement, classification or contract of a public utility or corporation relating to a rate, and
- (c) a schedule or tariff respecting a rate;

"service" includes

- (a) the use and accommodation provided by a public utility,
- (b) a product or commodity provided by a public utility, and
- (c) the plant, equipment, apparatus, appliances, property and facilities employed by or in connection with a public utility in providing service or a product or commodity for the purposes in which the public utility is engaged and for the use and accommodation of the public;

"tenant" does not include a lessee for a term of more than 5 years;

"value" or "appraised value" means the value determined by the commission.

PART 1—UTILITIES COMMISSION

Commission continued

- 2 (1) The British Columbia Utilities Commission is continued.
- (2) The commission is to consist of
 - (a) not more than 7 commissioners appointed by the Lieutenant Governor in Council during pleasure for a period not longer than 5 years, and
 - (b) other temporary commissioners appointed under subsection (6).
- (3) A person whose service as a commissioner has ended may be reappointed.
- (4) The Lieutenant Governor in Council
 - (a) must designate a commissioner as chair, and
 - (b) may designate one or more other commissioners as deputy chair.
- (5) The chair is the chief executive officer of the commission and has supervision over and direction of the work and the staff of the commission.
- (6) The Lieutenant Governor in Council may appoint persons as temporary commissioners for the purpose of a matter before the commission, or for a period or during circumstances the Lieutenant Governor in Council specifies.
- (7) The Lieutenant Governor in Council must set the salaries of the commissioners and the remuneration of the temporary commissioners.
- (8) During the period or under the circumstances or for the purpose for which a person is named as a temporary commissioner, the person has all the powers of and may perform all the duties of a commissioner including the duties of a chair if the person is designated as chair.
- (9) In the absence or inability to act of the chair, or if there is a vacancy in the office, a deputy chair must act as chair for the purposes of a hearing.
- (10) If there is no chair or deputy chair, or no chair or deputy chair present or able to act, another commissioner may act as chair.

Commission subject to direction

- 3 (1) The commission must comply with any general or special direction, made by regulation of the Lieutenant Governor in Council, with respect to the exercise of its powers and functions.
- (2) The Lieutenant Governor in Council may issue a direction to the commission specifying the factors, criteria and guidelines that the commission must or must not use in regulating and fixing rates for the authority.
- (3) The commission must comply with the direction under subsection (2) despite
- (a) any other provisions of this Act, or
 - (b) any previous decision of the commission.

Sittings and divisions

- 4 (1) The commission
- (a) must sit at the times and conduct its proceedings in a manner it considers convenient for the proper discharge and speedy dispatch of its duties under this Act, and
 - (b) subject to this section, may make rules respecting its sittings and regulating its procedure, including notices authorized or required to be given under this Act.
- (2) The chair may organize the commission into divisions, each consisting of at least 3 commissioners.
- (3) The commissioners must sit
- (a) as the commission, or
 - (b) as a division of the commission.
- (4) If commissioners sit as a division
- (a) 2 or more divisions may sit at the same time,
 - (b) the division has all the jurisdiction of and may exercise and perform the powers and duties of the commission, and
 - (c) a decision or action of the division is a decision or action of the commission.
- (5) Subject to subsections (8) and (9), at a sitting of the commission or of a division of the commission, 2 commissioners are a quorum
- (6) Subject to section 17 (2), the chair may designate a commissioner to serve as chair at any sitting of the commission or a division of it at which the chair or a deputy chair is not present.
- (7) If a proceeding is being held by the commission or by a division and a sitting commissioner is absent or unable to attend,
- (a) that commissioner is thereafter disqualified from continuing to sit on the proceeding, and
 - (b) despite subsection (5), the commissioner or commissioners remaining present and sitting must exercise and perform all the jurisdiction, powers and duties of the commission.
- (8) Despite anything in this section,
- (a) in relation to a matter the minister specifies and that is to be heard by the commission under Part 1 or 2, the minister may designate a commissioner to sit as a division of the commission, and
 - (b) in relation to a matter the chair specifies and that is to be heard by the commission under Part 3, the chair may designate a commissioner to sit as a division of the commission.
- (9) A commissioner acting under subsection (8) has all the jurisdiction of and may exercise and perform the powers and duties of the commission, and the commissioner's decision or action is the decision or action of the commission.

Commission's duties

5 (1) On the request of the Lieutenant Governor in Council, it is the duty of the commission to advise the Lieutenant Governor in Council on any matter, whether or not it is a matter in respect of which the commission otherwise has jurisdiction.

(2) If, under subsection (1), the Lieutenant Governor in Council refers a matter to the commission, the Lieutenant Governor in Council may specify terms of reference requiring and empowering the commission to inquire into the matter.

(3) The commission may carry out a function or perform a duty delegated to it by or under an enactment of Canada.

Notice of hearings

6 If the commission is directed or authorized under this Act to hold a hearing, it must give reasonable notice of the hearing, but an act or decision of the commission must not be questioned or held invalid on the ground that no notice or insufficient notice has been given to any person.

Employees

7 Despite the *Public Service Act*, the commission may employ a secretary and other officers and other employees it considers necessary and may determine their duties, conditions of employment and remuneration.

Technical consultants

8 The commission may appoint or engage persons having special or technical knowledge necessary to assist the commission in carrying out its functions.

Pensions

9 The Lieutenant Governor in Council may, by order, direct that the Pension (Public Service) Act applies to commissioners, officers and other employees of the commission, but the commission may, alone or in cooperation with other corporations, departments, commissions or other agencies of the Crown, establish, support or participate in any one or more of

- (a) a pension or superannuation plan, or
- (b) a group insurance plan

for the benefit of commissioners, officers and other employees of the commission and their dependents.

Secretary's duties

10 (1) The secretary must

- (a) keep a record of the proceedings before the commission,
- (b) ensure that every rule, regulation and order of the commission is filed in the records of the commission,
- (c) have custody of all rules, regulations and orders made by the commission and all other records and documents of, or filed with, the commission, and
- (d) carry out the instructions and directions of the commission under this Act or the regulations respecting the secretary's duties or office.

(2) On the application of a person who pays a prescribed fee, the secretary must deliver to the person a certified copy of any rule, regulation or order of the commission.

(3) In the absence of the secretary, the duties of the secretary under this Act may be performed by another person appointed by the commission.

(4) A rule, regulation and order of the commission must be signed by the chair, a deputy chair or an acting chair, and the original or a copy of it must be delivered to the secretary for filing.

Utilities Commission Act

Conflict of interest

11 (1) A commissioner or employee of the commission must not, directly or indirectly,

- (a) hold, acquire or have a beneficial interest in a share, stock, bond, debenture or other security of a corporation or other person subject to regulation under Part 2 or 3 of this Act,
- (b) have a significant beneficial interest in a device, appliance, machine, article, patent or patented process, or a part of it, that is required or used by a corporation or other person referred to in paragraph (a) for the purpose of its equipment or service, or
- (c) have a significant beneficial interest in a contract for the construction of works or the provision of a service for or by a corporation or other person referred to in paragraph (a).

(2) A commissioner or employee of the commission, in whom a beneficial interest referred to in subsection (1) is or becomes vested, must divest himself or herself of the beneficial interest within 3 months after appointment to the commission or acquisition of the property, as the case may be.

(3) The use or purchase for personal or domestic purposes, of gas, heat, light, power, electricity or petroleum products or service from a corporation or other person subject to regulation under this Act is not a contravention of this section, and does not disqualify a commissioner or employee from acting in any matter affecting that corporation or other person.

Obligation to keep information confidential

12 (1) Every commissioner and every officer and employee of the commission must keep secret all information coming to the person's knowledge during the course of the administration of this Act, except insofar as disclosure is necessary for the administration of this Act or insofar as the commission authorizes the person to release the information.

(2) A commissioner, officer or employee of the commission must not be required to testify in a civil action to which the commission is not a party about information obtained by the person in the discharge of the person's duty.

Annual report

13 (1) In each year, the commission must make a report to the Lieutenant Governor in Council for the preceding calendar year, setting out briefly

- (a) all applications and complaints to the commission under this Act and summaries of the commission's findings on them,
- (b) other matters that the commission considers to be of public interest in connection with the discharge of its duties under this Act, and
- (c) other information the Lieutenant Governor in Council directs.

(2) The report must be laid before the Legislative Assembly as soon as possible after it is submitted to the Lieutenant Governor in Council.

PART 2—ENERGY REMOVAL CERTIFICATES AND REGULATED PROJECTS

Definitions

14 (1) In this Part:

"energy" includes every form of energy;

"energy resource" means natural gas and oil, and all other forms of petroleum and hydrocarbon, in gaseous or liquid state, and electricity;

"regulated project" means

- (a) an electric transmission line of 500 kV or higher voltage or a substation with which such a transmission line is connected, or both,
- (b) an energy transshipment terminal or energy storage facility, capable of storing an energy resource in a quantity that is capable of yielding by combustion 3 PJ or more of energy,

- (c) an energy use project,
- (d) a transmission pipeline, capable of transporting in one year natural gas, oil or solids, or a liquid or gas derived from them, in a quantity that is capable of yielding by combustion 16 PJ or more of energy,
- (e) a hydroelectric power plant that has a capacity of 20 MW or more of electricity,
- (f) a thermal electric power plant that has a capacity of 20 MW or more of electricity,
- (g) an addition by which one of the following will be added to a hydroelectric or thermal electric power plant:
 - (i) 20 MW or more of electric capacity;
 - (ii) 20 average annual MW or more of firm energy capability, and
- (h) an addition to a project referred to in any of paragraphs (a) to (d) where the addition, if constructed alone, would fall within any of those paragraphs and, whether or not the addition is to a project referred to in paragraph (i) or (j),
but does not include
 - (i) a project that is complete or in operation before September 11, 1980, or
 - (j) a project in respect of which, before September 11, 1980, site preparation or the fabrication, construction, installation or supply of buildings, equipment, machinery or other facilities had begun.

(2) The Lieutenant Governor in Council may designate as a regulated project an undertaking of any kind that the Lieutenant Governor in Council considers to be significant in the matter of energy, whether or not the undertaking is a project referred to in paragraph (i) or (j) of the definition of "regulated project".

(3) An undertaking that is designated under subsection (2) is deemed for the purposes of this Act to be a regulated project.

Removal of energy resource from British Columbia

15 (1) So as to ensure the efficient use of energy resources and to ensure that present and future requirements of British Columbia may be met, a person must not remove from British Columbia an energy resource produced, manufactured or generated within British Columbia, except in accordance with an energy removal certificate granted under this Part.

- (2) As an exception, an energy removal certificate is not required,
 - (a) subject to subsection (4), if the removal is carried out in accordance with
 - (i) a contract made before September 11, 1980, or
 - (ii) a licence, permit or authorization issued for that purpose by the National Energy Board before September 11, 1980, or
 - (b) if the removal is exempted from this section by the regulations.

(3) For the purpose of subsection (2), the regulations may

- (a) create exemptions for different circumstances and for different classes of an energy resource, and
- (b) apply to different classes of person.

(4) If a contract, licence, permit or authorization is, after July 28, 1982, renewed or extended, an exemption in respect of that contract, licence, permit or authorization, arising by the operation of subsection (2) (a), ceases.

Application for energy removal certificate

16 (1) An application for an energy removal certificate or for a modification of it must be made to the minister and must contain information the minister prescribes.

(2) If

- (a) application is made for an energy removal certificate, or
- (b) the minister considers it desirable,

the minister may invite applications for energy removal certificates from other persons who may be similarly interested in removal of an energy resource from British Columbia, and may specify a time limit within which the applications must be made.

Utilities Commission Act

Minister's disposition of application

17 (1) On receipt of an application under section 16, the minister may

- (a) refer the application to the commission for a review,
- (b) issue an energy removal certificate to the applicant, subject to conditions the minister considers to be in the public interest, or
- (c) refuse to issue an energy removal certificate to the applicant.

(2) If the minister refers an application to the commission, the minister may designate a commissioner or temporary commissioner to act as chair for the purpose of the review.

Review by commission and disposition of application

18 (1) If an application for an energy removal certificate or for a modification of it is referred to the commission for a review, the commission must

- (a) hear the application in public hearing in accordance with terms of reference specified by the minister, and
- (b) on conclusion of the hearing, submit a report and recommendations to the Lieutenant Governor in Council.

(2) The terms of reference may include a requirement that the commission's hearings of specified applications be consolidated into one hearing.

(3) On receiving the report and recommendations of the commission, the Lieutenant Governor in Council may

- (a) refuse to issue the energy removal certificate, or
- (b) issue the energy removal certificate subject to conditions the Lieutenant Governor in Council considers to be in the public interest.

Certificate may allow officials to change conditions

19 (1) In an energy removal certificate under section 17 imposing conditions, to the extent the minister considers advisable, the minister may permit a person specified in the certificate to add to, vary or delete the conditions.

(2) In an energy removal certificate under section 18 imposing conditions, to the extent the Lieutenant Governor in Council considers advisable, the Lieutenant Governor in Council may permit a person specified in the certificate to add to, vary or delete the conditions.

(3) On an addition, variation or deletion by a person specified in a certificate referred to in subsection (1) or (2) being communicated to the holder of the certificate or to a person otherwise affected, the changes are binding as if they had been expressly included in the certificate.

Inspection of regulated projects

20 A person authorized in writing by the minister may, at any reasonable time, enter on property where a regulated project is being constructed or is in operation, and inspect any works or activity connected with the regulated project.

PART 3—REGULATION OF PUBLIC UTILITIES

Application of this Part

21 (1) This Part applies only to a public utility that is subject to the legislative authority of the Province.

(2) The provision by a public utility of a class of service in respect of which the public utility is not subject to the legislative authority of the Province does not make this Part inapplicable to that public utility in respect of any other class of service.

Person generating electricity for own use

22¹ (1) For the purpose of this section, a person sells, purchases or produces a power service if the person

- (a) generates electricity, ~~or~~
- (b) for the purpose of heating or cooling any building, structure or equipment or for any industrial purpose, heats, cools or refrigerates water, air or any heating medium or coolant, using for that purpose equipment powered by a fuel or a geothermal resource or solar energy, ~~or~~
- (c) enters into an energy supply contract, within the meaning of section 68, for the provision of electricity.

(2) The minister may, ~~by order,~~

- (a) ~~exempt, in respect of a sale of power service, a person who produces a power service, or a class of persons who produce a power service, from any or all of the provisions of this Part, and~~
- (a) exempt, by order, from any or all of section 71 and the provisions of this Part, in respect of the sale, purchase or production of a power service,
 - (i) a person who sells, purchases or produces a power service,
 - (ii) a class of persons who sell, purchase or produce a power service, and
 - (iii) any equipment, facility, plant, project or system of a person or class of persons referred to in subparagraph (i) or (ii), and.
- (b) ~~impose in the order if the minister makes an order under paragraph (a), impose, in the order, terms and conditions respecting the extent or quantity of power service to be sold~~ the power service to be sold, purchased or produced, the price to be charged for it and any other conditions the minister considers to be in the public interest.

(3) The minister may

- (a) before making an order under subsection (2), refer the matter to the commission for a review, or
- (b) authorize the commission to make an order under subsection (2).

General supervision of public utilities

23 (1) The commission has general supervision of all public utilities and may make orders about

- (a) equipment,
- (b) appliances,
- (c) safety devices,
- (d) extension of works or systems,
- (e) filing of rate schedules,
- (f) reporting, and
- (g) other matters it considers necessary or advisable for
 - (i) the safety, convenience or service of the public, or
 - (ii) the proper carrying out of this Act or of a contract, charter or franchise involving use of public property or rights.

(2) Subject to this Act, the commission may make regulations requiring a public utility to conduct its operations in a way that does not unnecessarily interfere with, or cause unnecessary damage or inconvenience to, the public.

Commission must make examinations and inquiries

24 In its supervision of public utilities, the commission must make examinations and conduct inquiries necessary to keep itself informed about

- (a) the conduct of public utility business,
- (b) compliance by public utilities with this Act, regulations or any other law, and

¹ Amendments passed July 30, 1998, Bill 50

- (c) any other matter in the commission's jurisdiction.

Commission may order improved service

25 If the commission, after a hearing held on its own motion or on complaint, finds that the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory, the commission must

- (a) determine what is reasonable, safe, adequate and fair service, and
- (b) order the utility to provide it.

Commission may set standards

26 After a hearing held on the commission's own motion or on complaint, the commission may do one or more of the following:

- (a) determine and set just and reasonable standards, classifications, rules, practices or service to be used by a public utility;
- (b) determine and set adequate and reasonable standards for measuring quantity, quality, pressure, initial voltage or other conditions of supplying service;
- (c) prescribe reasonable regulations for examining, testing or measuring a service;
- (d) establish or approve reasonable standards for accuracy of meters and other measurement appliances;
- (e) provide for the examination and testing of appliances used to measure a service of a utility.

Joint use of facilities

27 (1) If the commission, after a hearing, finds that

- (a) public convenience and necessity require the use by a public utility of conduits, subways, poles, wires or other equipment belonging to another public utility, and
- (b) the use will not prevent the owner or other users from performing their duties or result in any substantial detriment to their service,

the commission may, if the utilities fail to agree on the use, conditions or compensation, make an order it considers reasonable, directing that the use or joint use of the conduits, subways, poles, wires or other equipment be allowed and prescribing conditions of and compensation for the use.

(2) If the commission, after a hearing, finds that the provision of adequate service by one public utility or the safety of the persons operating or using that service requires that wires or cables carrying electricity and run, placed, erected, maintained or used by another public utility be placed, constructed or equipped with safety devices, the commission may make an order it considers reasonable about the placing, construction or equipment.

(3) By the same or a later order, the commission may

- (a) direct that the cost of the placing, construction or equipment be at the expense of the public utility whose wire, cable or apparatus was most recently placed, or
- (b) in the discretion of the commission, apportion the cost between the utilities.

Utility must provide service if supply line near

28 (1) On being requested by the owner or occupier of the premises to do so, a public utility must supply its service to premises that are located within 90 metres of its supply line or any lesser distance that the commission prescribes suitable for that purpose.

(2) Before supplying the service under subsection (1) or making a connection for the purpose, or as a condition of continuing to supply the service, the public utility may require the owner or occupier to give reasonable security for repayment of the costs of making the connection as set out in the filed schedule of rates.

(3) After a hearing and for proper cause, the commission may relieve a public utility from the obligation to supply service under this Act or regulations on terms the commission considers proper and in the public interest.

Commission may order utility to provide service if supply line distant

- 29** On the application of a person whose premises are located more than 90 metres from a supply line suitable for that purpose, the commission may order a public utility that controls or operates the line
- (a) to supply, within the time the commission directs, the service required by that person, and
 - (b) to make extensions and install necessary equipment and apparatus on terms the commission directs, which terms may include payment of all or part of the cost by the applicant.

Commission may order extension of existing service

If the commission, after a hearing, determines that

- (a) an extension of the existing services of a public utility, in a general area that the public utility may properly be considered responsible for developing, is feasible and required in the public interest, and
- (b) the construction and maintenance of the extension will not necessitate a substantial increase in rates chargeable, or a decrease in services provided, by the utility elsewhere,

the commission may order the utility to make the extension on terms the commission directs, which may include payment of all or part of the cost by the persons affected.

Regulation of agreements

31 The commission may make rules governing conditions to be contained in agreements entered into by public utilities for their regulated services or for a class of regulated service.

Use of municipal thoroughfares

32 (1) This section applies if a public utility

- (a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and
- (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

Dispensing with municipal consent

33 (1) This section applies if a public utility

- (a) cannot agree with a municipality respecting placing its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse in a municipality, and
- (b) the public utility is otherwise unable, without expenditures that the commission considers unreasonable, to extend its system, line or apparatus from a place where it lawfully does business to another place where it is authorized to do business.

(2) On application and after a hearing, for the purpose of that extension only and without unduly preventing the use of the street or other place by other persons, the commission may, by order,

- (a) allow the use of the street or other place by the public utility, despite any law or contract granting to another person exclusive rights, and
- (b) specify the manner and terms of the use.

Order to extend service in municipality

34 (1) On the complaint of a municipality that a public utility doing business in the municipality fails to extend its service to a part of the municipality, and after any hearing the commission considers advisable, the commission may order the public utility to extend its service in a way that the commission considers reasonable and proper.

(2) An order under subsection (1) may

- (a) in the commission's discretion, impose terms for the extension, including the expenditure to be incurred for all necessary works, and
- (b) apportion the cost between the public utility, the municipality and consumers receiving service from the extension.

Other orders to extend service

35 If the commission, after a hearing, concludes that in its opinion an extension by a public utility of its existing service would provide sufficient business to justify the construction and maintenance of the extension, and the financial condition of the public utility reasonably warrants the capital expenditure required, the commission may order the utility to extend its service to the extent the commission considers reasonable and proper.

Use of municipal structures

36 Subject to any agreement between a public utility and a municipality and to the franchise or rights of the public utility, and after any hearing the commission considers advisable, the commission may, by order, specify the terms on which the public utility may use for any purpose of its service

- (a) a highway in the municipality, or
- (b) a public bridge, viaduct or subway constructed or to be constructed by the municipality alone or jointly with another municipality, corporation or government.

Supervisors and inspectors

37 (1) If the commission considers that a supervisor or inspector should be appointed to supervise or inspect, continuously or otherwise, the system, works, plant, equipment or service of a public utility with a view to establishing and carrying out measures for

- (a) the safety of the public and of the users of the utility's service, or
- (b) adequacy of service,

the commission may appoint a supervisor or inspector for that utility and may specify the person's duties.

(2) The commission may

- (a) set the salary and expenses of a supervisor or inspector appointed under subsection (1), and
- (b) order the amount set
 - (i) to be borne by the municipality in which the operations of the public utility are carried on or its service is provided, or
 - (ii) to be borne or apportioned in a way the commission considers equitable.

Public utility must provide service

38 A public utility must

- (a) provide, and
- (b) maintain its property and equipment in a condition to enable it to provide,

a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

No discrimination or delay in service

39 On reasonable notice, a public utility must provide suitable service without undue discrimination or undue delay to all persons who

- (a) apply for service,
- (b) are reasonably entitled to it, and
- (c) pay or agree to pay the rates established for that service under this Act or the regulations.

Exemption for part of municipality

40 (1) On application, the commission may, by order, exempt a municipality from section 39 except in a defined area.

(2) On application by any person and after notice to the municipality, the commission may enlarge or reduce an area defined under subsection (1).

No discontinuance without permission

41 A public utility that has been granted a certificate of public convenience and necessity or a franchise, or that has been deemed to have been granted a certificate of public convenience and necessity, and has begun any operation for which the certificate or franchise is necessary, or in respect of which the certificate is deemed to have been granted, must not cease the operation or a part of it without first obtaining the permission of the commission.

Duty to obey orders

42 A public utility must obey the lawful orders of the commission made under this Act for its business or service, and must do all things necessary to secure observance of those orders by its officers, agents and employees.

Duty to provide information

43 (1) A public utility must provide to the commission information required by the commission and, for the purposes of this Act, must answer specifically all questions of the commission.

(2) A public utility that receives from the commission any form of return must fully and correctly answer each question in the return and deliver it to the commission.

(3) On request by the commission, a public utility must deliver to the commission

- (a) all profiles, contracts, reports of engineers, accounts and records in its possession or control relating in any way to its property or service or affecting its business, or verified copies of them, and
- (b) complete inventories of the utility's property in the form the commission directs.

(4) On request by the commission, a public utility must file with the commission a statement in writing setting out the name, title of office, post office address and the authority, powers and duties of

- (a) every member of the board of directors and the executive committee,
- (b) every trustee, superintendent, chief or head of construction or operation, or of any department, branch, division or line of construction or operation, and
- (c) other officers of the utility.

(5) The statement required under subsection (4) must be filed in a form that discloses the source and origin of each administrative act, rule, decision, order or other action of the utility.

Duty to keep records

44 (1) A public utility must have in British Columbia an office in which it must keep all accounts and records required by the commission to be kept in British Columbia.

(2) A public utility must not remove or permit to be removed from British Columbia an account or record required to be kept under subsection (1), except on conditions specified by the commission.

Utilities Commission Act

Certificate of public convenience and necessity

45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.

(2) For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it

- (a) to operate the plant or system, and
- (b) subject to subsection (5), to construct and operate extensions to the plant or system.

(3) Nothing in subsection (2) authorizes the construction or operation of an extension that is a regulated project under this Act or a reviewable project under the *Environmental Assessment Act*.

(4) The commission may, by regulation, exclude utility plant or categories of utility plant from the operation of subsection (1).

(5) If it appears to the commission that a public utility should, before constructing or operating an extension to a utility plant or system, apply for a separate certificate of public convenience and necessity, the commission may, not later than 30 days after construction of the extension is begun, order that subsection (2) does not apply in respect of the construction or operation of the extension.

(6) A public utility must file with the commission at least once each year a statement in a form prescribed by the commission of the extensions to its facilities that it plans to construct.

(7) Except as otherwise provided, a privilege, concession or franchise granted to a public utility by a municipality or other public authority after September 11, 1980 is not valid unless approved by the commission.

(8) The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest.

(9) In giving its approval, the commission

- (a) must grant a certificate of public convenience and necessity, and
- (b) may impose conditions about
 - (i) the duration and termination of the privilege, concession or franchise, or
 - (ii) construction, equipment, maintenance, rates or service,

as the public convenience and interest reasonably require.

Procedure on application

46 (1) An applicant for a certificate of public convenience and necessity must file with the commission information, material, evidence and documents that the commission prescribes.

(2) The commission has a discretion whether or not to hold any hearing on the application.

(3) The commission may issue or refuse to issue the certificate, or may issue a certificate of public convenience and necessity for the construction or operation of a part only of the proposed facility, line, plant, system or extension, or for the partial exercise only of a right or privilege, and may attach to the exercise of the right or privilege granted by the certificate, terms, including conditions about the duration of the right or privilege under this Act as, in its judgment, the public convenience or necessity may require.

(4) If a public utility desires to exercise a right or privilege under a consent, franchise, licence, permit, vote or other authority that it proposes to obtain but that has not, at the date of the application, been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.

(5) On application under subsection (4), the commission may make an order declaring that it will, on application, under rules it specifies, issue the desired certificate, on the terms it designates in the order, after the public utility has obtained the proposed consent, franchise, licence, permit, vote or other authority.

(6) On evidence satisfactory to the commission that the consent, franchise, licence, permit, vote or other authority has been secured, the commission must issue a certificate under section 45.

(7) The commission may amend a certificate previously issued, or issue a new certificate, for the purpose of renewing, extending or consolidating a certificate previously issued.

(8) A public utility to which a certificate is, or has been, issued, or to which an exemption is, or has been, granted under section 45 (4), is authorized, subject to this Act, to construct, maintain and operate the plant, system or extension authorized in the certificate or exemption.

Order to cease work

47 (1) If a public utility

- (a) is engaged, or is about to engage, in the construction or operation of a plant or system, and
- (b) has not secured or has not been exempted from the requirement for, or is not deemed to have received a certificate of public convenience and necessity required under this Act,

any interested person may file a complaint with the commission.

(2) The commission may, with or without notice, make an order requiring the public utility complained of to cease the construction or operation until the commission makes and files its decision on the complaint, or until further order of the commission.

(3) The commission may, after a hearing, make the order and specify the terms under this Act that it considers advisable.

(4) If the commission considers it necessary to determine whether a person is engaged or is about to engage in construction or operation of any plant or system, the commission may request that person to provide information required by it and to answer specifically all questions of the commission, and the person must comply.

Cancellation or suspension of franchises and permits

48 (1) If the commission, after a hearing, determines that a public utility holding a franchise, licence or permit has failed to exercise or has not continued to exercise or use the right and privilege granted by the franchise, licence or permit, the commission may

- (a) cancel the franchise, licence or permit, or
- (b) suspend for a time the commission considers advisable the rights, or any of them, under the franchise, licence or permit.

(2) If a franchise, licence or permit is cancelled, the utility must cease to operate.

(3) If a right under a franchise, licence or permit is suspended, the utility must cease to exercise the suspended right during the period of suspension.

Accounts and reports

49 The commission may, by order, require every public utility to do one or more of the following:

- (a) keep the records and accounts of the conduct of the utility's business that the commission may specify, and for public utilities of the same class, adopt a uniform system of accounting specified by the commission;
- (b) provide, at the times and in the form and manner the commission specifies, a detailed report of finances and operations, verified as specified;
- (c) file with the commission, at the times and in the form and manner the commission specifies, a report of every accident occurring to or on the plant, equipment or other property of the utility, if the accident is of such nature as to endanger the safety, health or property of any person;

- (d) obtain from a board, tribunal, municipal or other body or official having jurisdiction or authority, permission, if necessary, to undertake or carry on a work or service ordered by the commission to be undertaken or carried on that is contingent on the permission.

Commission approval of issue of securities

50 (1) In this section, "**security**" means any share of any class of shares of a public utility or any bond, debenture, note or other obligation of a public utility whether secured or unsecured.

(2) Except in the case of a security evidencing indebtedness payable less than one year from its date, a public utility must not issue a security without first obtaining approval of the commission under this section and, if section 54 applies, under that section.

(3) Without first obtaining the commission's approval, a public utility must not,

- (a) in respect of a security that it has issued,
 - (i) increase a fixed dividend or fixed interest rate,
 - (ii) alter a maturity date for the issue,
 - (iii) restrict the utility's right to redeem the issue,
 - (iv) increase the premium to be paid on redemption, or
 - (v) make a material alteration in the characteristics of the security, or
- (b) purchase, redeem or otherwise acquire shares of any class of the utility except in accordance with any special rights or restrictions attached to them.

(4) Subsections (2) and (3) do not apply to the issue of shares under a genuine employee share purchase plan or genuine employee share option plan that has been filed with the commission.

(5) Without first obtaining the commission's approval, a public utility must not guarantee the payment of all or part of a loan or all or part of the interest on a loan made to another person.

(6) A public utility is not liable under a guarantee given by it after June 29, 1988, in contravention of subsection (5) or of a condition of approval imposed under subsection (7).

(7) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.

(8) A municipality is not a utility for the purpose of this section.

Restraint on capitalization

51 A public utility must not do any of the following:

- (a) capitalize a franchise or right to be a corporation;
- (b) capitalize a franchise, licence, permit or concession in excess of the amount that, exclusive of tax or annual charge, is paid to the government, a municipality or other public authority as consideration for the franchise, licence, permit or concession;
- (c) issue a security or evidence of indebtedness against a contract for consolidation, amalgamation, merger or lease.

Restraint on disposition

52 (1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,

- (a) dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or
- (b) by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.

(2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.

Consolidation, amalgamation and merger

53 (1) A public utility must not consolidate, amalgamate or merge with another person

- (a) unless the Lieutenant Governor in Council
 - (i) has first received from the commission a report under this section including an opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, and
 - (ii) has, by order, consented to the consolidation, amalgamation or merger, and
- (b) except in accordance with an order made under paragraph (a).

(2) The Lieutenant Governor in Council may, in an order under subsection (1) (a), include conditions and requirements that the Lieutenant Governor in Council considers necessary or advisable.

(3) An application for consent of the Lieutenant Governor in Council under subsection (1) must be made to the commission by the public utility.

(4) The commission must inquire into the application and may for that purpose hold a hearing.

(5) On conclusion of its inquiry, the commission must,

- (a) if it is of the opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, submit its report and findings to the Lieutenant Governor in Council, or
- (b) dismiss the application.

(6) If a public utility gives notice to its shareholders of a meeting of shareholders in connection with a consolidation, amalgamation or merger, it must

- (a) set out in the notice the provisions of this section, and
- (b) file a copy of the notice with the commission at the time of mailing to the shareholders.

Reviewable interests

54 (1) In this section:

"**child**" includes a child in respect of whom a person referred to in the definition of "spouse" stands in the place of a parent;

"**offeree**" means a person to whom a take over bid is made;

"**offeror**" means a person, other than an agent, who makes a take over bid and includes 2 or more persons

- (a) whose bids are made jointly or in concert, or
- (b) who intend to exercise jointly or in concert any voting rights attaching to the shares for which a take over bid is made;

"**spouse**" includes a man or woman not married to each other who are living together and have lived together as husband and wife for a period of not less than 2 years;

"**take over bid**" has the same meaning as in the *Securities Act*;

"**voting share**" means a share that has, or may under any special rights or restrictions attached to the share have, the right to vote for the election of directors, and for this purpose "**share**" includes

- (a) a security convertible into such a share, and
- (b) options and rights to acquire such a share or such a convertible security.

- (2) For the purposes of this section, persons are associates if any of the following apply:
- (a) one of the persons is a corporation
 - (i) of which more than 10% of the shares outstanding of any class of the corporation are beneficially owned or controlled, directly or indirectly, by the other person, or
 - (ii) of which the other is a director or officer;
 - (b) each of the persons is a corporation and
 - (i) more than 10% of the shares outstanding of any class of shares of one are beneficially owned or controlled, directly or indirectly, by the other, or
 - (ii) more than 10% of the shares outstanding of any class of shares of each are beneficially owned or controlled, directly or indirectly, by the same person;
 - (c) they are partners or one is a partnership of which the other is a partner;
 - (d) one is a trust in which the other has a substantial beneficial interest or for which the other serves as trustee or in a similar capacity;
 - (e) they are obligated to act in concert in exercising a voting right in respect of shares of the utility;
 - (f) one is the spouse or child of the other;
 - (g) one is a relative of the other or of the other's spouse and has the same home as the other.
- (3) For the purpose of subsection (2), if a person has more than one associate, those associates are associates of each other.
- (4) For the purpose of this section, a person has a reviewable interest in a public utility if
- (a) the person owns or controls, or
 - (b) the person and the person's associates own or control, in the aggregate more than 20% of the voting shares outstanding of any class of shares of the utility.
- (5) A public utility must not, without the approval of the commission,
- (a) issue, sell, purchase or register on its books a transfer of shares in the capital of the utility or create, or
 - b) attach to any shares, whether issued or unissued, any special rights or restrictions,
- if the issue, sale, purchase or registration or the creation or attachment of the special rights or restrictions would
- (c) cause any person to have a reviewable interest,
 - (d) increase the percentage of voting shares owned by a person who has a reviewable interest,
 - (e) be a registration of a transfer of shares, the acquisition of which was contrary to subsection (7) or (8), or
 - (f) increase the voting rights attached to any shares owned by a person who has a reviewable interest.
- (6) Failure of a public utility to comply with subsection (5) does not give rise to an offence if the public utility acts in the genuine belief based on an enquiry made with reasonable care, that the issue, sale, purchase or registration, or the creation or attachment of the special rights or restrictions, would not have the effects referred to in subsection (5) (c) to (f).
- (7) A person must not acquire or acquire control of such numbers of any class of shares of a public utility as
- (a) in themselves, or
 - (b) together with shares already owned or controlled by the person and the person's associates,
- cause the person to have a reviewable interest in a public utility unless the person has obtained the commission's approval.
- (8) Except if the acquisition or acquisition of control does not increase the percentage of voting shares held, owned or controlled by the person or by the person and the person's associates, a person having a reviewable interest in a public utility and any associate of that person must not acquire or acquire control of any voting shares in the public utility unless the person or associate has obtained the commission's approval.

(9) The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected.

(10) If the commission determines that there has been a contravention of subsection (5), (7) or (8), the commission may, on notice to the public utility and after a hearing, make an order imposing on the public utility conditions and requirements respecting the management and operation of the utility.

(11) A proceeding must not be brought against the commission or the government by reason of the exercise by the commission of its powers under subsection (9) or (10).

(12) An offeror who makes a take over bid for shares of a public utility must

- (a) file with the commission a copy of the take over bid and all supporting or supplementary material within 5 days after the date the material is first sent to offerees, and
- (b) include in or attach to the take over bid a notice setting out the provisions of this section and stating the number, without duplication, and designation of any shares of the public utility held by the offeror and the offeror's associates.

(13) Nothing in subsection (12) relieves a person from any requirement of or under the *Securities Act*, its regulations or the rules made or deemed to be made by the British Columbia Securities Commission under section 184 of that Act.

Appraisal of utility property

55 (1) The commission may

- (a) ascertain by appraisal the value of the property of a public utility, and
- (b) inquire into every fact that, in *its* judgment, has a bearing on that value, including the amount of money actually and reasonably expended in the undertaking to provide service reasonably adequate to the requirements of the community served by the utility as that community exists at the time of the appraisal.

(2) In making its appraisal, the commission must have access to all records in the possession of a municipality or any ministry or board of the government.

(3) In making its appraisal under this section, the commission may order

- (a) that all or part of the costs and expenses of the commission in making the appraisal must be paid by the public utility, and
- (b) that the utility pay an amount as the work of appraisal proceeds.

(4) The certificate of the chair of the commission is conclusive evidence of the amounts payable under subsection (3).

(5) Expenses approved by the commission in connection with an appraisal, including expenses incurred by the public utility whose property is appraised, must be charged by the utility to the cost of operating the property as a current item of expense, and the commission may, by order, authorize or require the utility to amortize this charge over a period and in the manner the commission specifies.

Depreciation accounts and funds

56 (1) If the commission, after inquiry, considers that it is necessary and reasonable that a depreciation account should be carried by a public utility, the commission may, by order, require the utility to keep an adequate depreciation account under rules and forms of account specified by the commission.

(2) The commission must determine and, by order after a hearing, set proper and adequate rates of depreciation.

(3) The rates must be set so as to provide, in addition to the expense of maintenance, the amounts required to keep the public utility's property in a state of efficiency in accordance with technical and engineering progress in that industry of the utility.

(4) A public utility must adjust its depreciation accounts to conform to the rates fixed by the commission and, if ordered by the commission, must set aside out of earnings whatever money is required and carry it in a depreciation fund.

(5) Without the consent of the commission, the depreciation fund must not be expended other than for replacement, improvement, new construction, extension or addition to the property of the utility.

Reserve funds

57 (1) The commission may, by order, require a public utility to create and maintain a reserve fund for any purpose the commission considers proper, and may fix the amount or rate to be charged each year in the accounts of the utility for the purpose of creating the reserve fund.

(2) The commission may order that no reserve fund other than that created and maintained as directed by the commission may be created by a public utility.

Commission may order amendment of schedules

58 (1) The commission may,

- (a) on its own motion, or
- (b) on complaint by a public utility or other interested person that the existing rates in effect and collected or any rates charged or attempted to be charged for service by a public utility are unjust, unreasonable, insufficient, unduly discriminatory or in contravention of this Act, the regulations or any other law,

after a hearing, determine the just, reasonable and sufficient rates to be observed and in force.

(2) If the commission makes a determination under subsection (1), it must, by order, set the rates.

(3) The public utility affected by an order under this section must

- (a) amend its schedules in conformity with the order, and
- (b) file amended schedules with the commission.

Discrimination in rates

59 (1) A public utility must not make, demand or receive

- (a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or
- (b) a rate that otherwise contravenes this Act, the regulations, orders of the commission or any other law.

(2) A public utility must not

- (a) as to rate or service, subject any person or locality, or a particular description of traffic, to an undue prejudice or disadvantage, or
- (b) extend to any person a form of agreement, a rule or a facility or privilege, unless the agreement, rule, facility or privilege is regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description.

(3) The commission may, by regulation, declare the circumstances and conditions that are substantially similar for the purpose of subsection (2) (b).

(4) It is a question of fact, of which the commission is the sole judge,

- (a) whether a rate is unjust or unreasonable,
- (b) whether, in any case, there is undue discrimination, preference, prejudice or disadvantage in respect of a rate or service, or
- (c) whether a service is offered or provided under substantially similar circumstances and conditions.

- (5) In this section, a rate is "unjust" or "unreasonable" if the rate is
- (a) more than a fair and reasonable charge for service of the nature and quality provided by the utility,
 - (b) insufficient to yield a fair and reasonable compensation for the service provided by the utility, or a fair and reasonable return on the appraised value of its property, or
 - (c) unjust and unreasonable for any other reason.

Setting of rates

60 (1) In setting a rate under this Act or the regulations

- (a) the commission must consider all matters that it considers proper and relevant affecting the rate,
- (b) the commission must have due regard, among other things, to the setting of a rate that is not unjust or unreasonable, within the meaning of section 59, and
- (c) if the public utility provides more than one class of service, the commission must
 - (i) segregate the various kinds of service into distinct classes of service,
 - (ii) in setting a rate to be charged for the particular service provided, consider each distinct class of service as a self contained unit, and
 - (iii) set a rate for each unit that it considers to be just and reasonable for that unit, without regard to the rates fixed for any other unit.

(2) In setting a rate under this Act or regulations, the commission may take into account a distinct or special area served by a public utility with a view to ensuring, so far as the commission considers it advisable, that the rate applicable in each area is adequate to yield a fair and reasonable return on the appraised value of the plant or system of the public utility used, or prudently and reasonably acquired, for the purpose of providing the service in that special area

(3) If the commission takes a special area into account under subsection (2), it must have regard to the special considerations applicable to an area that is sparsely settled or has other distinctive characteristics.

(4) For this section, the commission must exclude from the appraised value of the property of the public utility any franchise, licence, permit or concession obtained or held by the utility from a municipal or other public authority beyond the money, if any, paid to the municipality or public authority as consideration for that franchise, licence, permit or concession, together with necessary and reasonable expenses in procuring the franchise, licence, permit or concession.

Rate schedules to be filed with commission

61 (1) A public utility must file with the commission, under rules the commission specifies and within the time and in the form required by the commission, schedules showing all rates established by it and collected, charged or enforced or to be collected or enforced.

(2) A schedule filed under subsection (1) must not be amended without the commission's consent.

(3) The rates in schedules as filed and as amended in accordance with this Act and the regulations are the only lawful, enforceable and collectable rates of the public utility filing them, and no other rate may be collected, charged or enforced.

(4) A public utility may file with the commission a new schedule of rates that the utility considers to be made necessary by a rise in the price, over which the utility has no effective control, required to be paid by the public utility for its gas supplies, other energy supplied to it, or expenses and taxes, and the new schedule may be put into effect by the public utility on receiving the approval of the commission.

(5) Within 60 days after the date it approves a new schedule under subsection (4), the commission may,

- (a) on complaint of a person whose interests are affected, or
- (b) on its own motion,

direct an inquiry into the new schedule of rates having regard to the fixing of a rate that is not unjust or unreasonable.

- (6) After an inquiry under subsection (5), the commission may
- (a) rescind or vary the increase and order a refund or customer credit by the utility of all or part of the money received by way of increase, or
 - (b) confirm the increase or part of it.

Schedules must be available to public

6 2 A public utility must keep a copy of the schedules filed open to and available for public inspection under commission rules.

Schedules must be observed

6 3 A public utility must not, without the consent of the commission, directly or indirectly, in any way charge, demand, collect or receive from any person for a regulated service provided by it, or to be provided by it, compensation that is greater than, less than or other than that specified in the subsisting schedules of the utility applicable to that service and filed under this Act and the regulations.

Orders respecting contracts

6 4 (1) If the commission, after a hearing, finds that under a contract entered into by a public utility a person receives a regulated service at rates that are unduly preferential or discriminatory, the commission may

- (a) declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or
- (b) make any other order it considers advisable in the circumstances.

(2) If a contract is declared unenforceable either wholly or in part, the commission may order that rights accrued before the date of the order be preserved, and those rights may then be enforced as fully as if no proceedings had been taken under this section.

PART 4—CARRIERS, PURCHASERS AND PROCESSORS

Common carrier

~~**6 5²** (1) On application by an interested party and after a hearing, notice of which has been given to all persons the commission believes may be affected, the commission~~

- ~~(a) may issue an order, to be effective on a date determined by the commission, declaring a person to be a common carrier with respect to the operation of a pipeline for the transportation of one or more of
 - ~~(i) crude oil,~~
 - ~~(ii) natural gas,~~
 - ~~(iii) natural gas liquids, or~~
 - ~~(iv) another type of energy resource prescribed by the Lieutenant Governor in Council, and~~~~
- ~~(b) in the order, may establish the conditions under which the common carrier must accept and carry the crude oil, natural gas, natural gas liquids or other energy resource.~~

~~**6 5** (1) On application by a party that uses or seeks to use facilities operated by a person declared to be a common carrier by the Oil and Gas Commission, the British Columbia Utilities Commission, by order and after a hearing, notice of which has been given to all persons the latter commission believes may be affected, may establish the conditions under which the common carrier must accept and carry the crude oil, natural gas or natural gas liquids.~~

~~(1.1) On application by an interested party and after a hearing, notice of which has been given to all persons the British Columbia Utilities Commission believes may be affected, that commission,~~

(a) _____ may issue an order, to be effective on a date determined by it, declaring a person to be a common carrier with respect to the operation of a pipeline for the transportation of a type of energy resource prescribed by the Lieutenant Governor in Council, other than crude oil, natural gas and natural gas liquids, and

(b) _____ in the order, may establish the conditions under which the common carrier must accept and carry that energy resource.

(1.2) The effective date of an order of the British Columbia Utilities Commission under subsection (1) is the date determined by the Oil and Gas Commission under the *Oil and Gas Commission Act*.

(2) A common carrier must comply with the conditions in an order made under this section.

(3) The commission may, by order and after a hearing, notice of which has been given to all persons the commission believes may be affected, vary an order made under this section.

(4) If an agreement between a person declared to be a common carrier and another person

- (a) was made before an order was made under this section, and
- (b) is inconsistent with the conditions established by the commission,

the commission may, in the order or a subsequent order, vary the agreement between the parties to eliminate the inconsistency.

(5) The common carrier and the commission are not liable for damages suffered by the other person resulting from a variation under subsection (4).

~~(6) The commission may declare persons to be common carriers, whether or not they have acted or held themselves out as common carriers.³~~

Common purchaser

~~66 4 (1) On application by an interested party and after a hearing, notice of which has been given to all persons the commission believes may be affected, the commission~~

~~(a) _____ may issue an order declaring that a person who purchases or otherwise acquires, from a pool designated by the commission,~~

- ~~(i) _____ crude oil,~~
- ~~(ii) _____ natural gas,~~
- ~~(iii) _____ natural gas liquids, or~~
- ~~(iv) _____ another type of energy resource prescribed by the Lieutenant Governor in Council,~~

~~is a common purchaser of the crude oil, natural gas, natural gas liquids or other type of energy resource, and~~

~~(b) _____ in the order but subject to subsection (3), may establish the conditions under which the common purchaser must purchase the crude oil, natural gas, natural gas liquids or other type of energy resource.~~

66 (1) On application by a party whose crude oil, natural gas or natural gas liquids is, or will be, purchased by a person designated as a common purchaser by the Oil and Gas Commission, the British Columbia Utilities Commission, by order and after a hearing, notice of which has been given to all persons the latter commission believes may be affected, may establish the conditions under which the common purchaser must purchase the crude oil, natural gas or natural gas liquids.

(1.1) The effective date of an order of the British Columbia Utilities Commission under subsection (1) is the date determined by the Oil and Gas Commission under the *Oil and Gas Commission Act*.

(2) A common purchaser must comply with the conditions in an order made under this section.

³ Amendments passed July 30, 1998, Bill 32

⁴ Amendments passed July 30, 1998, Bill 32

- (3) ~~The commission must not require a common purchaser to purchase natural gas from a pool~~
- (a) ~~in a greater total amount, or~~
 - (b) ~~at a greater rate,~~

~~than the common purchaser was obligated to purchase from that pool under the gas purchase contracts existing immediately before an order was made under this section.~~

- (4) The commission may, by order and after a hearing, notice of which has been given to all persons the commission believes may be affected, vary an order made under this section.

- (5) If an agreement made between a person declared to be a common purchaser and another person

- (a) was made before an order was made under this section, and
- (b) is inconsistent with the conditions established by the commission,

the commission may, in the order or a subsequent order, vary the agreement between the parties to eliminate the inconsistency.

- (6) The common purchaser and the commission are not liable for damages suffered by the other person resulting from a variation under subsection (5).

Common processor

~~67⁵ (1) On application by an interested party and after a hearing, notice of which has been given to all persons the commission believes may be affected, the commission~~

- (a) ~~may issue an order declaring that a person who owns or operates a plant for processing natural gas is a common processor, and~~
- (b) ~~in the order, may establish the conditions under which the common processor must accept and process natural gas.~~

67 (1) On application by a party that uses or seeks to use facilities operated by a person declared to be a common processor by the Oil and Gas Commission, the British Columbia Utilities Commission, by order and after a hearing, notice of which has been given to all persons the latter commission believes may be affected, may establish the conditions under which the common processor must accept and process natural gas.

(1.1) The effective date of an order of the British Columbia Utilities Commission under subsection (1) is the date determined by the Oil and Gas Commission under the *Oil and Gas Commission Act*.

- (2) A common processor must comply with the conditions in an order made under this section.

- (3) The commission may, by order and after a hearing, notice of which has been given to all persons the commission believes may be affected, vary an order made under this section.

- (4) If an agreement made between a person declared to be a common processor and another person

- (a) was made before an order was made under this section, and
- (b) is inconsistent with the conditions established by the commission,

the commission may, in the order or a subsequent order, vary the agreement between the parties to eliminate the inconsistency.

- (5) The common processor and the commission are not liable for damages suffered by the other person resulting from a variation under subsection (4).

⁵ Amendments passed July 30, 1998, Bill 32

PART 5—ELECTRICITY TRANSMISSION

Definitions

68 In this Part:

"electricity transmission contract" means a contract under which the electricity transmission facilities of a public utility are used by another person, and includes an amendment to that contract but does not include a contract in respect of which a schedule is filed under section 61;

"electricity transmission facilities" means conductors, circuits, transmission towers, substations, switching stations, transformers and any other equipment or facilities that are necessary for the purpose of transmitting electricity;

"energy" means electricity or natural gas;

"energy supply contract" means a contract under which energy is sold by a seller for delivery by means of the transmission facilities or distribution equipment of a public utility, and includes an amendment to that contract but does not include a contract in respect of which a schedule is filed under section 61;

"natural gas" means any methane, propane or butane that is sold for consumption as a domestic, commercial or industrial fuel or as an industrial raw material;

"public utility" means a public utility to which Part 3 applies;

"seller" means a person who sells or trades in energy.

Electricity transmission contracts

69 (1) A public utility that, after June 29, 1988, enters into an electricity transmission contract must

- (a) file a copy of the contract with the commission under rules and within the time it specifies, and
- (b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.

(2) If the commission, after a hearing, finds that a contract to which subsection (1) applies is not in the public interest, the commission may

- (a) by order, declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or
- (b) make any other order it considers advisable in the circumstances.

(3) If an electricity transmission contract is, under subsection (2) (a), declared unenforceable either wholly or in part, the commission may order that rights accrued before the date of the order under that subsection be preserved, and those rights may then be enforced as fully as if no proceedings had been taken under this section.

Use of electricity transmission facilities

70 (1) On application and after a hearing, the commission may make an order directing a public utility to allow a person, other than a public utility, to use the electricity transmission facilities of the public utility if the commission finds that

- (a) the person and the public utility have failed to agree on the use of the facilities or on the conditions or compensation for their use,
- (b) the use of the facilities will not prevent the public utility or other users from performing their duties or result in any substantial detriment to their service, and
- (c) the public interest requires the use of the facilities by the person.

(2) An order under subsection (1) may contain terms and conditions the commission considers advisable, including terms and conditions respecting the rates payable to the public utility for the use of its electricity transmission facilities.

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- (3) After a hearing, the commission may, by order, vary or rescind an order made under this section.
- (4) Any interested person may apply to the commission for an order under this section, and the application must contain the information the commission specifies.

Energy supply contracts (see attached Minister's Order M-297)

71 (1) A person who, after this section comes into force, enters into an energy supply contract must

- (a) file a copy of the contract with the commission under rules and within the time it specifies, and
- (b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.

(2) The commission may make an order under subsection (3) if the commission, after a hearing, finds that a contract to which subsection (1) applies is not in the public interest by reason of

- (a) the quantity of the energy to be supplied under the contract,
- (b) the availability of supplies of the energy referred to in paragraph (a),
- (c) the price and availability of any other form of energy, including but not limited to petroleum products, coal or biomass, that could be used instead of the energy referred to in paragraph (a),
- (d) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (a), or
- (e) any other factor that the commission considers relevant to the public interest.

(3) If subsection (2) applies, the commission may

- (a) by order, declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or
- (b) make any other order it considers advisable in the circumstances.

(4) If an energy supply contract is, under subsection (3) (a), declared unenforceable either wholly or in part, the commission may order that rights accrued before the date of the order under that subsection be preserved, and those rights may then be enforced as fully as if no proceedings had been taken under this section.

(5) An energy supply contract or other information filed with the commission under this section must be made available to the public unless the commission considers that disclosure is not in the public interest.

PART 6—COMMISSION JURISDICTION

Jurisdiction of commission to deal with applications

72 (1) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, complaining that a person constructing, maintaining, operating or controlling a public utility service or charged with a duty or power relating to that service, has done, is doing or has failed to do anything required by this Act or another general or special Act, or by a regulation, order, bylaw or direction made under any of them.

(2) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, requesting the commission to

- (a) give a direction or approval which by law it may give, or
- (b) approve, prohibit or require anything to which by any general or special Act, the commission's jurisdiction extends.

Mandatory and restraining orders

73 (1) The commission may order and require a person to do immediately or by a specified time and in the way ordered, so far as is not inconsistent with this Act, the regulations or another Act, anything that the person is or may be required or authorized to do under this Act or any other general or special Act and to which the commission's jurisdiction extends.

(2) The commission may forbid and restrain the doing or continuing of anything contrary to or which may be forbidden or restrained under any Act, general or special, to which the commission's jurisdiction extends.

MINISTER'S ORDER NO. M-22-9801 (M-297)
"Errors and Omissions Excepted"

IN THE MATTER OF THE SALE, PURCHASE OR PRODUCTION OF A POWER SERVICE AND AN EXEMPTION FROM THE PROVISION OF PART 3 AND SECTION 71 OF THE UTILITIES COMMISSION ACT, R.S.B.C. 1996, c. 473, AS AMENDED, ("THE ACT")

WHEREAS, certain persons in the Province generate electricity and sell, produce or purchase a power service, as defined in section 22(1) of the Act, including entering into energy supply contracts within the meaning of section 68 of the Act for the provision of electricity;

AND WHEREAS, some of these persons may sell some or all of the power service to the British Columbia Hydro and Power Authority ("the Authority") or the British Columbia Power Exchange Corporation ("Powerex"), by entering into energy supply contracts;

AND WHEREAS, pursuant to section 22 of the Act, the Minister of Employment and Investment ("the Minister") is empowered to exempt persons selling, producing or purchasing a power service from the provisions of Part 3 and section 71 of the Act specified in the order;

AND WHEREAS, the Minister considers that persons that sell a power service to the Authority or Powerex by entering into energy supply contracts should continue to be exempt from all provisions of Part 3, as well as section 71 of the Act, and that the Authority and Powerex should be exempt from Part 3 and section 71 of the Act for such purchases;

NOW THEREFORE, the Minister pursuant to section 22 of the Act hereby exempts from:

- (1) section 71 of the Act, persons and their successors or assigns, who have entered into an energy supply contract with either the Authority or Powerex on or before March 31, 2000, but only with respect to such contracts;
- (2) all provisions of Part 3 of the Act, persons and their successors or assigns who have entered into the contracts referred to in subsection (1) above, for the equipment, appliances, safety devices, facilities, plant, projects, system or system extensions required to produce and sell the power service to the Authority or Powerex pursuant to those contracts;
- (3) section 71 of the Act, the Authority or Powerex, in respect of an energy supply contract for the purchase of a power service from the persons referred to in subsection (1) above; and
- (4) all provisions of Part 3 of the Act, the Authority or Powerex, for the electrical equipment, appliances, safety devices, facilities, plant, projects, system or system extensions, directly constructed for or dedicated to the purchase of a power service pursuant to contracts referred to in subsection (1) above.

Original Signed by:
Minister of Employment and Investment

Dated this 28th day of August, 1998.

Powers to compel witnesses and documents

74 The commission has all the powers, rights and privileges of a judge of the Supreme Court for

- (a) the attendance and examination of witnesses,
- (b) taking of depositions in or out of British Columbia,
- (c) production and inspection of documents,
- (d) entry and inspection of property,
- (e) enforcement of its orders, and
- (e) other matters necessary or proper to exercise its jurisdiction under or for carrying into effect an Act within its jurisdiction.

Commission not bound by precedent

75 The commission must make its decision on the merits and justice of the case, and is not bound to follow legal precedent.

Jurisdiction as to liquidators and receivers

76 (1) The fact that a liquidator, receiver, manager or other official of a public utility, or other person engaged in the petroleum industry, or a person seizing a public utility's property has been appointed by a court in British Columbia, or is acting under the authority of a Court, does not prevent the exercise by the commission of any jurisdiction conferred by this Act.

(2) A liquidator, receiver, manager, official or person seizing must act in accordance with this Act and the orders and directions of the commission, whether the orders are general or particular.

(3) The liquidator or other person referred to in subsection (1), and any person acting under that person, must obey the orders of the commission, within its jurisdiction, and the commission may enforce its orders against the person even though the person is appointed by or acts under the authority of a court.

Power to extend time

77 If a work, act, matter or thing is, by order or decision of the commission, required to be performed or completed within a specified time, the commission may, if the circumstances of the case in its opinion so require, extend the time so specified

- (a) on notice and hearing, or
- (b) in its discretion, on application, without notice to any person.

Evidence

78 (1) The commission, in its discretion, may accept and act on evidence by affidavit, written statement, the report of any of its members or officers, or on evidence obtained in any other manner it decides.

(2) An inquiry that the commission considers necessary may be made by a member or officer or by a person appointed by the commission to make the inquiry, and the commission may act on that person's report.

(3) Each member, officer and person appointed has, for the purpose of the inquiry, the powers conferred on the commission by section 74.

(4) If a person is appointed to inquire and report on a matter, the commission may order by whom, and in what proportion, the costs incurred must be paid, and may set the amount of the costs.

Findings of fact conclusive

79 The determination of the commission on a question of fact in its jurisdiction, or whether a person is or is not a party interested within the meaning of this Act, is binding and conclusive on all persons and all courts.

Commission not bound by judicial acts

80 In determining a question of fact, the commission is not bound by the finding or order of a court in a proceeding involving the determination of that fact, and the finding or order is, before the commission, evidence only.

Pending litigation

81 The fact that a suit, prosecution or other proceeding in a court involving questions of fact is pending does not deprive the commission of jurisdiction to hear and determine the same questions of fact.

Power to inquire without application

82 (1) The commission

- (a) may, on its own motion, and
- (b) must, on the request of the Lieutenant Governor in Council,

inquire into, hear and determine a matter that under this Act it may inquire into, hear or determine on application or complaint.

(2) For the purpose of subsection (1), the commission has the same powers as are vested in it by this Act in respect of an application or complaint.

Action on complaints

83 If a complaint is made to the commission, the commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken.

General powers not limited

84 The enumeration in this Act of a specific commission power or authority does not exclude or limit other powers or authorities given to the commission.

Hearings to be held in certain cases

85 (1) Except in case of urgency, of which the commission is sole judge, the commission must not, without a hearing, make an order involving an outlay, loss or deprivation to a public utility.

(2) If an order is made in case of urgency without a hearing, on the application of a person interested, the commission must as soon as practicable hear and reconsider the matter and make any further order it considers advisable.

Public hearing

86 If this Act requires that a hearing be held, it must be a public hearing whenever, in the opinion of the commission or the Lieutenant Governor in Council, a public hearing is in the public interest.

Recitals not required in orders

87 In making an order, the commission is not required to recite or show on the face of the order the taking of any proceeding, the giving of any notice or the existence of any circumstance necessary to give the commission jurisdiction.

Application of orders

88 (1) In making an order, rule or regulation, the commission may make it apply to all cases, or to a particular case or class of cases, or to a particular person.

(2) The commission may exempt a person from the operation of an order, rule or regulation made under this Act, other than under Part 2, for a time the commission considers advisable.

(3) The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act, other than Part 2, or may limit or vary the application of this Act, other than Part 2.

(4) The commission has no power under this section to make an order respecting a matter that is subject to section 22.

Partial relief

89 On an application under this Act, the commission may make an order granting the whole or part of the relief applied for or may grant further or other relief, as the commission considers advisable.

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Commencement of orders

90 (1) In an order or regulation, the commission may direct that the order or regulation or part of it comes into operation

- (a) at a future time,
- (b) on the happening of an event specified in the order or regulation, or
- (c) on the performance, to the satisfaction of the commission, by a person named by it of a term imposed by the order.

(2) The commission may, in the first instance, make an interim order, and reserve further direction for an adjourned hearing or further application.

Orders without notice

91 (1) If the special circumstance of a case so requires, the commission may, without notice, make an interim order authorizing, requiring or forbidding anything to be done that the commission is empowered to authorize, require or forbid on application, notice or hearing.

(2) The commission must not make an interim order under subsection (1) for a longer time than it considers necessary for a hearing and decision.

(3) A person interested may, before final decision, apply to modify or set aside an interim order made without notice.

Directions

92 If, in the exercise of a commission power under an Act, the commission directs that a structure, appliance, equipment or works be provided, constructed, reconstructed, removed, altered, installed, operated, used or maintained, the commission may, except as otherwise provided in the Act conferring the power, order

- (a) by what person interested at or within what time,
- (b) at whose cost and expense,
- (c) on what terms including payment of compensation, and
- (d) under what supervision,

the structure, appliance, equipment or works must be carried out.

Enforcement of orders

93 If

- (a) an order is made by the commission for the payment of money, costs or a penalty, and
- (b) a written direction for enforcement of the order addressed to a sheriff, stating
 - (i) the amount due and payable and sought to be recovered under the order, and
 - (ii) the person by whom it is payable, is endorsed on or attached to a certified copy of the order and signed by the chair of the commission,

on receipt, the sheriff must levy the amount with the sheriff's costs in the same way and with the same powers as if the direction were an execution against the goods of the person by whom the amount is payable, issued by the Supreme Court.

Peace officers to assist

94 (1) A sheriff, deputy sheriff or peace officer is an officer of the commission and when requested, must aid, assist and obey the commission in the exercise of its jurisdiction.

(2) On the certificate of the commission's secretary of the fees payable and the person by whom they are payable, a sheriff, deputy sheriff or peace officer must be paid on the same basis as fees for similar services in the Supreme Court.

Lien on land

95 (1) If the commission makes an order for payment of money, costs or a penalty, the commission may register a copy of the order certified by the commission's secretary in a land title office.

(2) On registration in a land title office, an order is a lien and charge on all the land of the person ordered to make the payment that is in the land title district in which the order is registered, to the same extent and with the same effect and realizable in the same way as a judgment of the Supreme Court under the *Court Order Enforcement Act*.

Substitute to carry out orders

96 (1) If a person defaults in doing anything directed by an order of the commission under this Act,

- (a) the commission may authorize a person it considers suitable to do the thing, and
- (b) the person authorized may do the thing authorized and may recover from the person in default the expense incurred in doing the thing, as money paid for and at the request of that person.

(2) The certificate of the commission of the amount expended is conclusive evidence of the amount of the expense.

Entry, seizure and management

97 (1) The commission may take the steps and employ the persons it considers necessary to enforce an order made by it, and, for that purpose, may forcibly or otherwise enter on, seize and take possession of the whole or part of the business and the property of a public utility affected by the order, together with the records, offices and facilities of the utility.

(2) The commission may, until the order has been enforced or until the Lieutenant Governor in Council otherwise orders, assume, take over and continue the management of the business and property of the utility in the interest of its shareholders, creditors and the public.

(3) While the commission continues to manage or direct the management of the utility, the commission may exercise, for the business and property, the powers, duties, rights and functions of the directors, officers or managers of the utility in all respects, including the employment and dismissal of officers or employees and the employment of others.

(4) On the commission taking possession of the business and property of the utility, each officer and employee of the utility must obey the lawful orders and instructions of the commission for that business and property, and of any person placed by the commission in authority in the management of the utility or a department of its undertaking or service.

(5) On taking possession of the business and property of a public utility, the commission may determine, receive or pay out all money due to or owing by the utility, and give cheques and receipts for money to the same extent and to the same effect as the utility or its officers or employees could do.

(6) The costs incurred by the commission under this section are in the discretion of the commission, and the commission may order by whom and in what amount or proportion costs are to be paid.

Defaulting utility may be dissolved

98 (1) If a public utility incorporated under an Act of the Legislature fails to comply with a commission order, and the commission believes that no effective means exist to compel the utility to comply, the commission, in its discretion, may transmit to the Attorney General a certificate, signed by its chair and secretary, setting out the nature of the order and the default of the public utility.

(2) Ten days after publication in the Gazette of a notice of receipt of the certificate by the Attorney General, the Lieutenant Governor in Council may, by order, dissolve the public utility.

PART 7—DECISIONS AND APPEALS

Reconsideration by commission

99 The commission may reconsider, vary or rescind a decision, order, rule or regulation made by it, and may rehear an application before deciding it.

Requirement for hearing

100 If a hearing is held or required under this Act before a rule or regulation is made, the rule or regulation must not be altered, suspended or revoked without a hearing.

Utilities Commission Act

Appeal to Court of Appeal

101 (1) An appeal lies from a decision or order of the commission to the Court of Appeal with leave of a justice of that court.

(2) The party appealing must give notice of the application for leave to appeal, stating the grounds of appeal, to the commission, to the Attorney General and to any party adverse in interest, at least 2 clear days before the hearing of the application.

(3) If leave is granted, within 15 days from the granting, the appellant must give notice of appeal to the commission, to the Attorney General, and to any party adverse in interest.

(4) The commission and the Attorney General may be heard by counsel on the appeal.

(5) On the determination of the questions involved in the appeal, the Court of Appeal must certify its opinion to the commission, and an order of the commission must conform to that opinion.

No automatic stay of proceedings while matter appealed

102 (1) An appeal to the Court of Appeal does not of itself stay or suspend the operation of the decision, order, rule or regulation appealed from, but the Court of Appeal may grant a suspension, in whole or in part, until the appeal is decided, on the terms the court considers advisable.

(2) The commission may, in its discretion, suspend the operation of its decision, order, rule or regulation from which an appeal is taken until the decision of the Court of Appeal is given.

Costs of appeal

103 (1) Payment of the costs incurred for an application or appeal to the Court of Appeal may be enforced in the same way as payment of costs ordered by the commission.

(2) Neither the commission nor an officer, employee or agent of the commission is liable for costs in respect of an application or appeal referred to in subsection (1).

Case stated by commission

104 (1) The commission may, on its own motion or on the application of a party who gives the security the commission directs, and must, on the request of the Attorney General, state a case in writing for the opinion of the Court of Appeal a question that, in the opinion of the commission or of the Attorney General, is a question of law.

(2) The Court of Appeal must hear and determine all questions of law arising on the stated case and must remit the matter to the commission with the court's opinion.

(3) The court's opinion is binding on the commission and on all parties.

Jurisdiction of commission exclusive

105 (1) The commission has exclusive jurisdiction in all cases and for all matters in which jurisdiction is conferred on it by this or any other Act.

(2) Unless otherwise provided in this Act, an order, decision or proceeding of the commission must not be questioned, reviewed or restrained by or on an application for judicial review or other process or proceeding in any court.

PART 8—OFFENCES AND PENALTIES

Offences

106 (1) The following persons commit an offence:

- (a) a person who fails or refuses to obey an order of the commission made under this Act;
- (b) a person who does, causes or permits to be done an act, matter or thing contrary to this Act or omits to do an act, matter or thing required to be done by this Act;
- (c) a public utility
 - (i) that fails or refuses to prepare and provide to the commission in the

- time, manner and form, and with the particulars and verification required under this Act, an information return, the answer to a question submitted by the commission or information required by the commission under this Act,
- (ii) that willfully or negligently makes a return or provides information to the commission that is false in any particular,
 - (iii) that gives, or an officer of which gives, to an officer, agent, manager or employee of the utility a direction, instruction or request to do or refrain from doing an act referred to in paragraph (d) (i) to (vii) and in respect of which the officer, agent, manager or employee is convicted under paragraph (d) (i) to (vii), or
 - (iv) an officer, agent, manager or employee of which is convicted of an offence under paragraph (d) (viii);
- (d) an officer, agent, manager or employee of a public utility
- (i) who fails or refuses to complete and provide to the commission a report or form of return required under this Act or the regulations,
 - (ii) who fails or refuses to answer a question contained in a report or form of return required under this Act or the regulations,
 - (iii) who willfully gives a false answer to a question contained in a report or form of return required under this Act or the regulations,
 - (iv) who evades a question or gives an evasive answer to a question contained in a report or form of return required under this Act or the regulations, if the person has the means to ascertain the facts,
 - (v) who, after proper demand under this Act, fails or refuses to exhibit to the commission or a person authorized by it an account, record or memorandum of the public utility that is in the person's possession or under the person's control,
 - (vi) who fails to properly use and keep the system of accounting of the public utility specified by the commission under this Act,
 - (vii) who refuses to do any act or thing in that system of accounting when directed by the commission or its representative,
 - (viii) on whom the commission serves notice directing the person to provide to the commission information or a return that the utility may be required to provide under this Act or the regulations, and who willfully refuses or fails to provide the information or return to the best of the person's knowledge, or means of knowledge, in the manner and time directed by the commission, or
 - (ix) who knowingly registers or causes to be registered on the books of the public utility any issue or transfer of shares that has been made contrary to section 54 (5), (7) or (8);
- (e) the president, and each vice president, director, managing director, superintendent and manager of a public utility that fails or refuses to obey an order of the commission made under this Act;
- (f) the mayor and each councillor or member of the ruling body of a municipality that fails or refuses to obey an order of the commission made under this Act;
- (g) a person who contravenes section 15;
- (h) a person who obstructs or interferes with a commissioner, officer or person in the exercise of rights conferred or duties imposed by or under this Act;
- (i) a person who knowingly solicits, accepts or receives, directly or indirectly, a rebate, concession or discrimination for service of a public utility, if the service is provided or received in violation of this Act;
- (j) except so far as the person's public duty requires the person to report on or take official action, an officer or employee of the commission, or person having access to or knowledge of a return made to the commission or of information procured or evidence taken under this Act, other than a public inquiry or public hearing, who, without first obtaining the authority of the commission, publishes or makes known information, having obtained or knowing it to have been derived from the return, information or evidence;
- (k) a person who applies to a public utility to register on its books any issue or transfer of shares that has been made contrary to section 54 (5), (7) or (8).

- (2) Subsection (1) (e) and (f) does not apply if the person proves
- (a) that, according to the person's position and authority, the person took all necessary and proper means in the person's power to obey and carry out, and to procure obedience to and the carrying out of the order, and
 - (b) that the person was not at fault for the failure or refusal.
- (3) Subsection (1) (h) does not apply if the commissioner, officer or person does not, on request at the time, produce a certificate of his or her appointment or authority.
- (4) A person convicted of an offence under this section is liable to a penalty not greater than \$10 000.
- (5) If this Act makes anything an offence, each day the offence continues constitutes a separate offence.
- (6) Nothing in or done under this section affects the liability of a public utility otherwise existing or prejudices enforcement of an order of the commission in any way otherwise available.

Restraining orders

107 (1) If a person, to or in respect of whom

- (a) an energy removal certificate,
- (b) a certificate of public convenience and necessity,
- (c) an order under section 22, 53 or 54 (10), or
- (d) an approval given under section 50 or 54 (5), (7) or (8),

is issued, contravenes a condition or requirement of the certificate, order or approval, the contravention may be restrained in a proceeding brought by the minister in the Supreme Court.

(2) If a person contravenes section 15, the contravention may be restrained in a proceeding brought by the minister in the Supreme Court.

Revocation of certificates

108 If a person contravenes section 15 or a condition or requirement of an order made under section 22,

- (a) the Lieutenant Governor in Council may revoke
 - (i) the energy project certificate, energy operation certificate or energy removal certificate in respect of which the contravention occurred, and
 - (ii) any approval, licence or permit given or issued, in association with the certificate, or
- (b) the minister may revoke the order.

Remedies not mutually exclusive

109 If a person contravenes

- (a) section 15,
- (b) a condition or requirement of an order made under section 22, 53 or 54 (10),
- (c) the conditions of an approval given under section 50 or 54 (5), (7) or (8), or
- (d) a condition or requirement of a certificate of public convenience and necessity,

the penalties for the contravention provided for in section 106, the remedies for the contravention provided for in section 107 and, if applicable, the remedies provided for in section 108 are not mutually exclusive, and any or all of them may be applied in the one case.

PART 9 – GENERAL

Powers of commission in relation to other Acts

- 110** Subject to the *Economic Development Electricity Rate Act*, the powers given to the commission by this Act apply
- (a) even though the subject matter about which the powers are exercisable is the subject matter of an agreement or another Act,
 - (b) in respect of service and rates, whether fixed by or the subject of an agreement or other Act, or otherwise, and
 - (c) if the service or rates are governed by an agreement, whether the agreement is incorporated in, or ratified, or made binding by a general or special Act, or otherwise.

Substantial compliance

111 Substantial compliance with this Act is sufficient to give effect to the orders, rules, regulations and acts of the commission, and they must not be declared inoperative, illegal or void for want of form or an error or omission of a technical or clerical nature.

Vicarious liability

112 In construing and enforcing this Act, or a rule, regulation, order or direction of the commission, an act, omission or failure of an officer, agent or other person acting for or employed by a public utility, if within the scope of the person's employment, is deemed in every case to be the act, omission or failure of the utility.

Public utilities may apply

113 A person who is subject to regulation under this Act may make application or complaint to the commission about a matter affecting a public utility, as if made by another party interested.

Municipalities may apply

- 114** (1) In this section, “municipality” includes a regional district.
- (2) If a municipality believes that the interests of the public in the municipality or a part of it are sufficiently concerned, the municipality may, by resolution, become an applicant, complainant or intervenant in a matter within the commission's jurisdiction.
- (3) The municipality may, for subsection (2), take a proceeding or incur expense necessary
- (a) to submit the matter to the commission,
 - (b) to oppose an application or complaint before the commission, or
 - (c) if necessary, to become a party to a proceeding or appeal under this Act.

Certified documents as evidence

115 (1) A copy of a rule, regulation, order or other document in the commission secretary's custody, purporting to be certified by the secretary to be a true copy, is evidence of the document without proof of the signature.

(2) A certificate purporting to be signed by the commission secretary stating that no rule, regulation or order on a specified matter has been made by the commission, is evidence of the fact stated without proof of the signature.

Class representation

116 (1) With the approval of the Attorney General, the commission may appoint counsel to represent a class of persons interested in a matter for the purpose of instituting or attending on an application or hearing before the commission or another tribunal or authority.

(2) The commission may fix the costs of the counsel and may order by whom and in what amount or proportion they be paid.

Utilities Commission Act

Costs of commission

117 (1) In this section, "costs of the commission" includes costs incurred by the commission for the services of consultants and experts engaged in connection with the proceeding.

(2) The commission may order that the costs of the commission incidental to a proceeding before it are to be paid by one or more participants in the proceeding in such amounts and proportions as the commission may determine.

Participant costs

118 (1) The commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding.

(2) If the commission considers it to be in the public interest, the commission may pay all or part of the costs of participants in proceedings before the commission that were commenced on or after April 1, 1993 or that are commenced after June 18, 1993.

(3) Amounts paid for costs under subsection (2) must not exceed the limits prescribed for the purposes of this section.

Tariff of fees

119 With the advance approval of the Lieutenant Governor in Council, the commission may prescribe a tariff of fees for a matter within the commission's jurisdiction.

No waiver of rights

120 (1) Nothing in this Act releases or waives a right of action by the commission or a person for a right, penalty or forfeiture that arises under a law of British Columbia.

(2) No penalty enforceable under this Act is a bar to or affects recovery for a right, or affects or bars a proceeding against or prosecution of a public utility, its directors, officers, agents or employees.

Relationship with *Municipal Act*

121 Nothing in or done under the *Municipal Act*

- (a) supersedes or impairs a power conferred on the commission or a public utility, or
- (b) relieves a person of an obligation imposed by or under this Act or the *Gas Utility Act*.

No proceedings against commission

122 A proceeding must not be brought against the commission, a member of it, or a person employed by it for anything done in good faith in the performance or intended performance of a duty imposed by this Act.

Service of notice

123 (1) A notice that the commission is empowered or required to give to a person under this Act, rules or regulations must be in writing and may be served either personally or by mailing it to the person's address.

(2) If a notice is mailed, service of the notice is deemed to be effected at the time at which the letter containing the notice, properly addressed, postage prepaid and mailed, would be delivered in the ordinary course of post.

Reasons to be given

124 (1) If an application to the commission is opposed, the commission must prepare written reasons for its decision.

(2) If an application is unopposed, the commission may, and at the request of the applicant must, prepare written reasons for its decision.

(3) Written reasons must be made available by the secretary to any person on payment of the fee set by the commission.

(4) Subsections (1) and (2) do not apply to a proceeding under Part 2 of this Act, and any advice or report given by the commission to the Lieutenant Governor in Council under that Part must not be disclosed or made public, except by order of the Lieutenant Governor in Council.

Regulations

125 (1) The Lieutenant Governor in Council may make regulations as referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may, for the purpose of recovering the expenses arising out of the administration of this Act in a fiscal year, make regulations as follows:

- (a) setting, or authorizing the commission to set, by order of the commission, and to collect fees, levies or other charges from
 - (i) public utilities, a class of public utility or a particular public utility, and
 - (ii) other persons to whom a provision of this Act applies or a class of those persons;
- (b) setting, or authorizing the commission to set, the fees, levies or other charges payable by the members of the different classes referred to in paragraph (a) in different amounts;
- (c) exempting, or authorizing the commission to exempt, a public utility or other person, or a class of either of them, from the payment of a fee, levy or other charge;
- (d) authorizing the commission to retain all or part of any fees, levies or other charges collected by the commission under a regulation.

(3) The commission may make regulations on a matter for which it is empowered by this Act to make regulations.

Intent of Legislature

126 If a provision of this Act is held to be beyond the powers of British Columbia, that provision must be severed from the remainder of the Act, and the remaining provisions of the Act have the same effect as if they had been originally enacted as a separate enactment and as the only provisions of this Act.

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NEGOTIATED SETTLEMENT PROCESS POLICY, PROCEDURES AND GUIDELINES OF THE BRITISH COLUMBIA UTILITIES COMMISSION

I POLICY STATEMENT

The Commission's policy is to use the negotiated settlement process judiciously to foster better regulatory decisions and where possible to save time and reduce the cost of utility regulation. The Commission is committed to public participation in its processes and to transparency in its decision making. It is in the spirit of these values that this policy will be implemented.

II BACKGROUND

To improve the effectiveness and efficiency of energy regulation in British Columbia, the British Columbia Utilities Commission ("the Commission") is adopting processes that are alternative or complementary to its traditional regulatory process. For example, the Commission is using technical workshops, pre-hearing conferences, and discussion groups to encourage regulatory participants to discuss issues in an open, flexible and informal manner. On a number of occasions, the Commission has used a negotiated settlement process to seek agreements among regulatory participants about matters before the Commission.

There are a number of issues associated with the use of such alternative dispute resolution processes in a quasi-judicial, decision-making environment, particularly in the context of energy utility regulation. To address these issues the Commission issued discussion papers and received useful comments from interested parties.

Negotiated settlements can offer significant benefits to the regulatory process; however, realizing those benefits, while maintaining fundamental principles of natural justice and fairness, will require certain principles and process attributes to be present, including the appropriate participation of Commission staff. If participants are not satisfied with a negotiated settlement process they are free, at any time, to choose not to participate and to use the traditional hearing process to resolve their concerns. The flexible nature of the negotiated settlement process allows it to adapt to problems as these arise.

A negotiated settlement process may not always be appropriate or successful. To realize the potential benefits and to ensure that participants do not become discouraged with the process, it is critical that the negotiated settlement process be used judiciously. Recognizing when to use the process relies to a large extent on judgment and experience. The first question to be considered by potential participants is what, if any, of the issues are amenable to the negotiated settlement process.

The negotiated settlement process is a tool that complements the existing regulatory process. The Commission continues to administer its responsibilities under the Utilities Commission Act and cannot delegate decision making power to others; however, the negotiated settlement process is a tool that provides considerable flexibility to the Commission and participants. Used appropriately and with a certain amount of imagination, it should result in better regulatory decisions where participants achieve mutually beneficial settlements and, in many cases, cost and time savings.

III PROCEDURES FOR THE NEGOTIATED SETTLEMENT PROCESS

1. Initiation of the Process

The decision to conduct a negotiated settlement process will be made by the Commission, and confirmed by order, after consideration of the application and the interests of the affected parties. Participation is voluntary, and while unanimous support is preferred before attempting a settlement process, there may be situations where general agreement is sufficient.

2. The Right to Participate

The right to participate in settlements is recognized by the Commission. The Commission panel does not exclude or prohibit participation unless the party in question has no reasonable interest in the subject matter of the settlement discussions.

It may also be the case that, in some circumstances, the number of interested parties could preclude an effective settlement process. When this occurs, either a settlement will not be attempted, the application will be divided into sub-issues to reduce the number of participants at any one discussion, or participants representing similar issues may be encouraged to work together.

Interested parties cannot be forced to participate in a settlement process. A decision not to participate will not abrogate the right of the party to comment, for the Commission's consideration, on a resulting settlement agreement.

Proper notice is important to ensuring that all parties have the opportunity to participate in settlement discussions. Notice requirements will be the same as for a public hearing before the Commission.

Sufficient information will be available to registered intervenors so that issues can be assessed and the negotiated settlement process can begin. In most cases this will mean filing of the application, information requests, and responses to those requests.

Negotiated Settlement Processes are considered "proceedings" for the purpose of cost awards under section 133.1 of the Utilities Commission Act. Awards may be granted even if a settlement cannot be reached, but will be granted according to the same conditions, where appropriate, as for costs awarded on account of a full public hearing.

3. Steps in the Negotiated Settlement Process

Before settlement discussions begin, the Commission may establish various pre-settlement processes, including workshops and issues day meetings. The purpose of workshops is to assist all parties to understand specific aspects, policies or concepts in an application through informal presentations and discussions.

The negotiated settlement process may include technical workshops and pre-hearing conferences but will usually include the following stages:

- i) The Commission will consult with Commission staff to identify issues of concern that will be determined through a full public hearing and those issues that will be determined through the negotiated settlement process. Staff will convey that information to the participants.

- ii) Issues meetings may be held before the commencement of negotiations. All participants will be invited to suggest issues to be addressed through the negotiated settlement process and, by general agreement, may subsequently add, modify, delete or refer issues to the Commission panel for determination in a public hearing.
- iii) During the negotiation meetings, each of the participants will present their positions on each issue. Commission staff will also comment on the issues.
- iv) The participants will seek a consensus resolution of each issue. Any settlement agreement will allow dissenting participants to pursue their position directly with the Commission panel as set out in paragraph 6 below.
- v) The Settlement Agreement will be circulated amongst the participants and upon the written concurrence of the participants will then be distributed to all other interested parties and to the Commission panel. Any party who does not agree with the settlement will be expected to provide written reasons to the Commission panel. All responses will be transmitted to the Commission panel for its consideration. The responses and the Settlement Agreement will be distributed to all registered intervenors before a settlement hearing is conducted by the Commission panel.

4. Discussions Without Prejudice and Confidential

To foster open, frank, and innovative settlement discussions, bargaining positions presented during the settlement discussions will be without prejudice and confidential. The without prejudice and confidential nature of the discussions requires each participant to disclose whether they are participating in their own right or on behalf of some client(s). This disclosure will ordinarily appear in the Notice of Intervention, but if it does not, the participant must disclose the identity of the party for whom the participant is acting. Information that would have become available independently of the negotiated settlement process remains public information. The parties must agree to the confidentiality agreement set out in section V below, or they will not be permitted to participate in the negotiated settlement process. The confidentiality agreement will be made at the start of the first issues meeting or, in any event, before the commencement of negotiations.

5. Authority to Act

The Commission panel will require representatives to be able to speak to the concerns of their group or client during negotiations. Further, the Commission panel will require that representatives who sign off a settlement agreement have been given the authority to do so by their group or client.

6. The Right to Dissent

The right of parties to dissent from a proposed agreement is explicitly recognized by the Commission. If a party dissents, it can submit a written argument to the Commission panel. If the Commission panel is of the view that the dissent is reasonable and material, it may request written rebuttal argument or, where the settlement review process is to occur at an oral hearing, request argument at the oral hearing. If the dissent is determined to be reasonable and material, the dissenting party retains the right to present evidence and to cross-examine or to rebut the evidence of others if there is a written hearing.

7. The Role of Commission Staff

Staff participation in settlement discussions, and alternative dispute resolution generally, is important to the effectiveness of the process. Staff provide certain skills, knowledge and experience that may otherwise not be available to all participants.

Staff who attend settlement discussions will not disclose to the Commission any positions or offers presented during the settlement discussions without the consent of all participants.

Some parties have expressed concerns about the effects of settlement processes on staff neutrality. Some contend that their interests may be prejudiced if staff actively advocate a particular interest during settlement discussions and then later provide advice to the Commission panel. It is a legitimate concern that the objectivity of the Commission staff must be maintained throughout the settlement process. However, an impartial and unbiased staff does not mean that staff must be passive. Admittedly a two-staff model would more effectively remove this concern. The current fiscal and practical realities in B.C. do not favour increased staff levels. The Commission will take steps to avoid any inappropriate influence by Commission staff.

8. Commission Panel's Evaluation of Settlements

While the Commission strongly supports the development of the negotiated settlement process in British Columbia, the Commission has a statutory duty to regulate in the broad public interest. Therefore, the Commission panel will not accept a proposed settlement unless it is persuaded that the settlement agreement is in the public interest.

The Commission panel may approve agreements as “packages” rather than line-by-line. At the same time, the Commission panel will not accept individual terms that, in its judgment, contravene the Commission's obligations under the Act.

If the Commission panel wishes to amend a portion of a settlement and that amendment would have a material effect on one or more interests, the Commission will provide the necessary time for staff to contact all the signatories to the settlement to determine if they will agree to the changes. A final meeting of the participants to the negotiated settlement process to address the changes may be scheduled.

If the Commission panel rejects the settlement agreement, then where possible, an entirely new panel will be constituted to decide the application through a public hearing.

It is important that the Commission panel has sufficient information on the public record to evaluate a settlement agreement. In most cases, the following minimum information will be available: the terms of the agreement, the application and information responses, and a list of the participants who agree to the terms of the settlement. The Commission panel may require participants to submit additional information, either orally or in writing. Always, the onus of ensuring that sufficient information is on the record will rest with the proponents of the agreement.

The Commission panel may evaluate settlements through either an oral or a written public settlement hearing. The Commission panel may approve the settlement provided the Commission panel believes the settlement satisfies the public interest.

9. The Effect of a Settlement Agreement

The benefits of the negotiated settlement process will only be realized if participants are bound to the terms of the agreement. There are, however, circumstances where the agreement may require amendment:

- i) The Commission panel will normally accept or reject the entire settlement package but if the Commission panel decides to suggest changes to the settlement it will give registered intervenors full opportunity to address any proposed change, including sufficient time to make submissions on the impact of any change to the validity of the overall settlement;
- ii) One or more participants may become aware of new information that was not reasonably available to them at the time of the settlement discussions and which has a significant bearing on the assumptions upon which the settlement was reached; and
- iii) All participants may decide to opt out of the agreement.

Amendments will not be made once the Commission panel has reviewed and accepted the terms of a settlement.

When participants sign off a proposed settlement they agree to provide their support to the agreement and agree to waive their right to present evidence and cross-examine on matters dealt with by the agreement.

IV GUIDELINES FOR THE NEGOTIATED SETTLEMENT PROCESS

1. All negotiations are on a without prejudice basis for each issue until that issue has been signed off.
2. Once an issue has been signed off, the participants signing off agree not to dispute that issue at the Hearing unless new material information becomes available that was not reasonably available at the time of the negotiations.

3. Participants not signing off on an issue preserve the right to cross-examine, call evidence, and make final argument on the issue at the Hearing without prejudice to any positions that they may or may not have taken during the negotiations. In such an instance, no reference will be made to any positions taken by any other participant during the negotiations. In like manner participants that do sign off, preserve the right to cross-examine, call evidence, and make final argument on the issue raised by dissenting participants.
4. Participants to the negotiations agree that they will not raise at the Hearing any position taken by other participants during the negotiations.
5. Participants to the negotiations agree that they will not communicate the positions taken at the negotiations to third parties unless all the participants to the negotiations agree.
6. Once the negotiations are completed, and all issues are signed off — the Settlement Agreement — will be circulated to all other interested parties whether or not they were present at the negotiations in order to advise them of the negotiations and to obtain the positions of those not present.
7. The Commission panel will be provided with a hard copy of the Settlement Agreement and supporting information at the time it is circulated to all other interested parties. The Commission panel will be provided with any comments submitted by interested parties.
8. The Commission panel will not be provided with any information about the negotiations per se unless the participants to the negotiations agree.

V CONFIDENTIALITY AGREEMENT OF PARTICIPANTS TO THE NEGOTIATED SETTLEMENT PROCESS

As discussed in section III, paragraph 4 above, “Discussions Without Prejudice and Confidential”, bargaining positions presented during the settlement discussions will be without prejudice and confidential. The parties must agree to the confidentiality agreement set out below and comply with the confidentiality agreement, or they will not be permitted to participate in the negotiated settlement process.

We, on behalf of ourselves, and/or on behalf of our clients, as the case may be, will not disclose any positions taken either orally or in writing during the course of the negotiated settlement process to any parties not subject to this confidentiality agreement without the consent of all participants to the negotiations.

Without restricting the generality of the foregoing, we acknowledge that this confidentiality agreement will prevent us, or our clients, from cross-examination on those positions at any public hearing held in this matter and further prevent us from making use of those positions against the proponent of the positions in any argument at such hearing. Similarly, we undertake not to cross-examine witnesses about any positions taken in the negotiation settlement process.

We further acknowledge that we have fully read and now agree to conduct our negotiations according to the Negotiated Settlement Policy, Procedures and Guidelines as set out by the Commission.



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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

Participant Assistance/Cost Award Guidelines

BEFORE: P. Ostergaard, Chair)
L.R. Barr, Deputy Chair)
P.G. Bradley, Commissioner) November 18, 1998
F.C. Leighton, Commissioner)
K.L. Hall, Commissioner)
C.J. Kinsley, Commissioner)

O R D E R

WHEREAS:

- A. On June 18, 1993, legislative approval was given, with changes to Section 118 of the Utilities Commission Act ("the Act") (formerly identified as Section 133 of the Act S.B.C. 1980, c. 60, as amended), to allow the Commission to assist participants with costs associated with regulatory proceedings and public reviews; and
- B. On December 8, 1993, the Commission, by Order No. G-117-93, issued its participant funding guidelines pursuant to Section 118 of the Act, effective April 1, 1993. On October 11, 1996, following comments from the utilities and the public, the Commission approved amendments to the guidelines on participant assistance/cost awards, and issued Order No. G-103-96; and
- C. In 1998 the Commission, by Letter No. L-17-98, asked regulated utilities and interested parties to provide comment on all issues pertaining to participant assistance and cost awards, and to respond in writing by June 30, 1998; and
- D. Submissions were received from 12 parties identifying specific concerns and, on September 17, 1998, Commission staff issued a Position Paper and requested final comments to be received no later than October 15, 1998, of which five were received; and
- E. The Commission has reviewed the submissions, Commission staff's Position Paper, and final comments from interested parties and finds that the Participant Assistance/Cost Award Guidelines are required to be amended.

NOW THEREFORE pursuant to Section 118 of the Act, the Commission approves the amended Participant Assistance/Cost Award Guidelines, attached as Appendix A to this Order, effective immediately.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of November, 1998.

BY ORDER

Original signed by:

Lorna R. Barr
Deputy Chair

Attachment

Participant Assistance/Cost Award Guidelines

British Columbia Utilities Commission
Participant Assistance/Cost Award Guidelines
Section 118 of the Utilities Commission Act

1. Participant Eligibility

A Participant is an individual or an organization which actively participates in a proceeding of the Commission.

In determining an award of all or any portion of a Participant's costs, the Commission will consider the following:

- (i) Does the Participant represent a substantial interest in the proceeding and will the Participant be affected by the outcome?
- (ii) Has the Participant contributed to a better understanding of the issues by the Commission?
- (iii) Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
- (iv) Without the award, would the Participant be able to participate effectively in the proceeding?
- (v) Has the Participant joined with other groups with similar interests to reduce costs?
- (vi) Any other matter appropriate in the circumstances.

When making participant assistance/cost awards under Section 118(2) of the Act, the Commission will also consider the Commission approved budget for participant funding.

2. Application for a Cost Award

Submitting a Budget Estimate

For the purposes of these Guidelines, a proceeding begins when the Commission issues an order establishing a hearing, an inquiry or a Negotiated Settlement Process and normally ends when the Commission begins its deliberations. Participants who intend to apply for a cost award must submit a budget by the date set out in the Order establishing the proceeding. The Budget Estimate should address the Participant's eligibility considering Section 1 of these Guidelines, identify the key issues that the Participant will examine, indicate whether the Participant expects to lead evidence, and include an estimate of proceeding and preparation days. In addition, Participants who represent a coalition of groups should provide an annual letter from each particular coalition or group, identifying their general interest in Commission proceedings and authorizing representatives to act on their behalf. This letter may be provided at the beginning of the year or with the first intervention in a proceeding in a calendar year.

Commission staff will reply with a review letter that includes an estimate of proceeding days and an estimate of the preparation days that may be funded. 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 Participants of potential issues which may not be funded by the Commission.

The Commission will identify for the utility (or whoever will be asked to pay) those Participants who intend to apply for participant assistance.

Making the Final Application for a Cost Award

- (i) An application for a cost award must be made by filing a written application with the Commission panel 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.

A Participant applying for costs should again address its eligibility considering Section 1 of the Guidelines, preferably citing examples from the proceeding to support the awarding of costs. In addition, the application should address any reasons why the actual application differs from the Budget Estimate. For example, if the actual hearing is shorter or longer or the issues more or less complex than anticipated, Participants claiming an award should address how this affected their preparation when their application for a cost award is made. The application should be supported by a statement of costs with the appropriate receipts and invoices together with a sworn affidavit.

- (ii) The Commission panel will review the application and statement of costs. It may require further supporting documents from the Participant seeking costs.
- (iii) The Commission will provide the party being asked to pay with copies of the cost award applications and the opportunity to comment on them. The party will have ten working days to respond.
- (iv) The Commission panel will determine the entitlement to a full or partial award taking into account the criteria established in Section 1 of the Guidelines, the information provided by the Participant with respect to any variances from the participant's Budget Estimate and the initial staff estimate of proceeding and preparation days. The Commission panel will provide reasons for any reductions in cost awards.
- (v) The costs are to be awarded by Order no later than 2 months after the hearing Decision has been issued.
- (vi) Once in receipt of the Commission panel's Decision on the award, an affected Participant may seek a reconsideration of its award but must file its application within 10 working days.

3. Interim Award

The Commission panel may approve the costs of retaining a consultant by a Participant under an accelerated approval process. If approved, reimbursement will be provided once an invoice or receipt is received from the Participant by the Commission panel and the regulatory proceeding has begun. The Participant would also be required to file an application under Section 2 of these Guidelines at the conclusion of the hearing.

4. Participant Assistance: Eligible Costs and Rates

The following reasonable expenses are eligible for participant assistance. The term “proceeding day” may include workshop days, negotiation days, pre-hearing conference days and hearing days. The Commission may award costs for preparation days typically on a ratio of up to 2 days per proceeding day.

a. Foregone Earnings

The Commission will award costs for foregone earnings up to a maximum of \$175 per proceeding day. Participants claiming foregone earnings are required to provide proof of actual foregone earnings, except where to do so would be unreasonably difficult. In this case, an indication of the usual daily earnings must be provided. Where not otherwise provided for in these Guidelines, this provision may also be used to fund the appearance of witnesses who meet the Eligibility Criteria.

b. Legal Fees

The Commission panel will consider factors such as experience before regulatory tribunals, complexity of the issue and overall conduct of the counsel in determining an appropriate contribution or partial award towards legal costs.

The Commission may award legal counsel costs up to a maximum as set out in the scale below per full proceeding day or preparation day (assumed to be an eight hour day). Where the actual billing rate is less, the lesser amount will be used for the award.

Years Since Call	Maximum Daily Fee
0 – 5	\$800
5- 10	\$1000
10+	\$1200

These maximums do not include provision for GST and PST, which will also be allowed.

c. Case Managers

The Commission supports the use of case managers where this either reduces the use of legal counsel or enables a coalition of interest groups with similar positions to participate. However, the Commission will want to be assured that the use of a case manager is not associated with unnecessary duplication of personnel for any particular task.

d. Consultants

The consultant’s hourly rate will be compared to the fee schedule of professional organizations such as the Association of Professional Engineers and Geoscientists of the Province of British Columbia. In each case the consultant's resume must be provided.

Participants must demonstrate in their submitted budgets their efforts to find qualified consultants knowledgeable of issues in a British Columbia context and able to minimize total expenses (e.g. travel costs).

e. Disbursements

Disbursements directly related to the Participant's participation in the proceeding will be allowed. Payment may be up to the British Columbia Government Employees Union rates applicable to the Regulatory Affairs staff of the Commission for travel, accommodation and meals, etc. These rates are shown in the attached Schedule with the effective date shown. Because these rates may change, contact the Commission if you are unsure whether the attached Schedule remains in effect.

f. Child Care

Child care expenses (when such expenses are incurred for the purpose of participating) may be allowed to a maximum of \$50.00 per day.

g. Taxes

GST and PST costs which cannot be recovered under the taxation provisions will be allowed.

h. Other Costs

Other costs which the Commission panel may deem as reasonable and justified.

BRITISH COLUMBIA UTILITIES COMMISSION

PARTICIPANT ASSISTANCE/COST AWARDS RATE SHEET

Travel per Diems - (Effective January 1, 1998)

MEAL EXPENSES¹

Maximum \$43.00/Day (Out of Town Participants)

Breakfast only	\$21.50
Lunch only	21.50
Dinner only	28.00
Breakfast & Lunch	29.00
Breakfast & Dinner	35.50
Lunch & Dinner	35.50

TRAVEL RATE²

(Out of Town Participants)

Vehicle Mileage: \$.38/km²
Airfare: Full Fare Economy²

ACCOMMODATION RATES³

(single room rate)

May 1 through Sept 30

Oct 1 through April 30

Greater Vancouver	\$115.00 + taxes	\$80.00 + taxes
Victoria	\$95.00 + taxes	\$70.00 + taxes
Whistler	\$65.00 + taxes	\$80.00 + taxes
All other areas in Province	\$70.00 + taxes	\$65.00 + taxes
Private Accommodation	\$30.00/night	\$30.00/night

NOTES:

- Meal Expenses/Out of Town Participants:** The rates applicable to those Participants who have applied to attend a hearing not in their immediate area.
- Travel Rate/Out of Town Participants:** The rates applicable to those Participants who have applied for funding to attend a hearing not in their immediate area. The participant assistance approved for consideration will be the lesser amount of the two options.
- Accommodation rates apply to the area in which the hearing is being conducted. Please make note of the different seasonal rates applicable for high and low seasons.

INTEGRATED RESOURCE PLANNING (“IRP”) GUIDELINES BRITISH COLUMBIA UTILITIES COMMISSION (“BCUC”)

I PURPOSE OF GUIDELINES

These guidelines relate to the practice of IRP by utilities regulated by the BCUC. The guidelines are intended to provide general guidance regarding BCUC expectations of the process and methods utilities follow in developing an IRP. It is expected that the general rather than detailed nature of the proposed guidelines will allow utilities to formulate plans which reflect their specific circumstances.

II DEFINITION

IRP is a utility planning process which requires consideration of all known resources for meeting the demand for a utility’s product, including those which focus on traditional supply sources and those which focus on conservation and the management of demand¹. The process results in the selection of that mix of resources which yields the preferred² outcome of expected impacts and risks for society over the long run. The IRP process plays a role in defining and assessing costs, as these can be expected to include not just costs and benefits as they appear in the market but also other monetizable and non-monetizable social and environmental effects. The IRP process is associated with efforts to augment traditional regulatory review of completed utility plans with cooperative mechanisms of consensus seeking in the preparation and evaluation of utility plans. The IRP process also provides a framework that helps to focus public hearings on utility rates and energy project applications.

1 Referred to as Demand-Side Management (“DSM”).

2 The term “preferred” is chosen to imply that society has used some process to elicit social preferences in selecting among energy resource options. Unfortunately, there is rarely agreement on the best process for eliciting social preferences. Candidate processes in a democracy include public ownership with direction from cabinet or a ministry, regulation by a public tribunal, referendum, and various alternate dispute resolution methods (e.g. consensus seeking stakeholder collaboratives).

III RELATIONSHIP OF BCUC AND UTILITIES UNDER IRP

IRP does not change the fundamental regulatory relationship between the utilities and the BCUC. Thus, IRP guidelines issued by the BCUC do not mandate a specific outcome to the planning process nor do they mandate specific investment decisions. Each utility's IRP will reflect that utility's unique circumstances and its management's judgement. Under IRP, utility management continues to have full responsibility for making decisions and for accepting the consequences of those decisions. IRP will be relevant to the question of determining utility revenue requirements and rate design. Consistency with IRP guidelines and the filed IRP plan will be an additional factor that the BCUC will consider in judging the prudence of investments and rate applications, although inconsistency may be warranted by changed circumstances or new evidence.

IV GENERAL IRP GUIDELINES

An IRP must include certain basic components. These components are described in the following list of general guidelines that the BCUC will use in assessing the IRP efforts of the utilities it regulates. Smaller utilities will not be required to provide the level of detail and analysis contained in the IRPs of larger utilities and will have the opportunity to adopt components of those plans.

1. Identification of the objectives of the plan

Objectives include but are not limited to: adequate and reliable service; economic efficiency; preservation of the financial integrity of the utility; equal consideration of DSM and supply resources; minimization of risks; consideration of environmental impacts; consideration of other social principles of ratemaking³; coherency with government regulations and stated policies.

³ Bonbright, Danielsen and Kamerschen, (Principles of Public Utility Rates, 1988, Ch.8, p.165), define social principles of ratemaking as "any policy of rate control designed to make the supply of utility services responsive to social needs and social costs". The authors point out that the rates set by utility commissions invariably involve some discretionary judgement about the extent to which broader social principles should influence ratemaking. The most recent concern is with negative environmental externalities, but this concern should be situated within the broader issue; hence the inclusion of the generic term social principles of ratemaking. The general implication is that because of social and environmental objectives, the rates charged by utilities may be allowed to diverge from those that would result from a rate determination based exclusively on financial least cost. The social principles to be addressed may be identified by the utility, intervenors, or government.

2. Development of a range of gross (pre-DSM) demand forecasts

In making a demand forecast, it is necessary to distinguish between demographic, social, economic and technological factors unaffected by utility actions, and those actions the utility can take to influence demand, (e.g. rates, DSM programs). The latter actions should not be reflected in the utility's gross demand forecasts.⁴ More than one forecast would generally be required in order to reflect uncertainty about the future: probabilities or qualitative statements may be used to indicate that one forecast is considered to be more likely than others. The energy end-use categories used in analysis of DSM programs should be compatible with those used in demand forecasting, so that at any point a consistent distinction can be made between demand with and without DSM on an end-use specific basis. Thus, the gross demand forecast should be structured in such a way that the savings, load shifting or load building due to each DSM resource can be allocated to specific end-uses in the demand forecast.

3. Identification of supply and demand resources

All feasible⁵ individual supply and demand resources, both committed and potential, should be listed. Individual resources are defined as indivisible investments or actions by the utility to modify energy and/or capacity supply, or modify (decrease, shift, increase) energy and/or capacity demand.

⁴ In other words, gross forecasts represent an attempt to simulate markets in which the utility did nothing to influence demand. Of course this is not entirely possible. Utilities will continue to require rate increases and existing DSM programs will affect demand as will already ordered rate design changes. However, the assumptions made with respect to these factors in estimating future gross demand should be clearly specified so that the effects of these assumptions may be distinguished from the effects of future utility actions designed to influence demand.

⁵ Feasible resource options are defined as those options consistent with the objectives of the IRP. For example, government policy may rule out a particular technology or form of energy.

4. Characterizing supply and demand resources

Each supply and demand resource must be measured against a consistent set of attributes.⁶ These attributes reflect the objectives established in Guideline 1. They may include utility and customer costs (life cycle costs, impact on rates) as well as monetizable and non-monetizable social/environmental impacts, risks and lost opportunities.⁷ This is generally referred to as multi-attribute analysis, a methodology that allows for comparison of resources not just in terms of direct costs, but also in terms of all other relevant attributes. Supply and demand resource cost estimates should represent the full costs of achieving a given magnitude of the resource. These cost estimates may be represented as supply curves; i.e. graphs showing the unit costs associated with different magnitudes of the resource.

5. Development of multiple integrated resource portfolios

For each of the gross demand forecasts, several plausible resource portfolios should be developed, each consisting of a combination of supply and demand resources needed to meet the gross demand forecast. The gross demand forecasts and the resource portfolios should cover the same period, generally 15 to 20 years into the future.

6. Evaluation and selection of resource portfolios

For each of the gross demand forecasts, the set of alternative resource portfolios which match the forecast are compared on an attribute by attribute basis, as defined by the objectives of the IRP. If a minimal quantity of a resource (e.g. a given amount of DSM) is included in all resource portfolios attached to a gross demand forecast, then that quantity can be included in the IRP without further

⁶ Measurement may be quantitative or qualitative depending on the attribute.

⁷ Lost opportunities are opportunities which, if not exploited promptly, are lost irretrievably or rendered much more costly to achieve. Examples can include cogeneration opportunities that occur when renovating a pulp and paper mill but are not taken and additional insulation that is not installed in a new house.

analysis. For those resources that are not identified as common to all resource portfolios, a multi-attribute trade-off process, involving the public, should be undertaken. This process would lead to the selection of a set of resource portfolios, each portfolio matching one of the gross demand forecasts. The set of resource portfolios is the utility's IRP.⁸

7. The action plan

The selection process in Guideline 6 provides the components for the action plan. The action plan consists of the detailed acquisition steps for those resources (from the selected resource portfolio) which need to be initiated over the next four years in order to meet the most likely gross demand forecast. In addition, the action plan should specify how the utility will respond over time to increased information indicating that the most likely gross demand forecast was too high or too low.⁹ Examples of flexible actions that the utility could consider acquiring extra-regional purchase options, acceleration or deceleration of DSM programs, early retirement or recommissioning of facilities, or sale of surplus at a discount. The action plan should also show how resources with considerable uncertainty (e.g. DSM) include experimental design criteria and monitoring that allow for hindsight evaluation of their market impacts and full resource costs.

8. Public input

The public is to be involved throughout the IRP process. This could include a wide range of methods for providing information to the public and for involving the public in the planning process. Methods might include stakeholder collaboratives, information meetings, workshops, and issue papers seeking public response. Utilities are encouraged to focus resources for public participation on areas of the IRP where it will prove most useful and to choose methods which best fit the need of their IRP. Joint processes by two or more utilities are acceptable provided the requirements of each utility can be met.

⁸ Guidelines 4 through 6 may require iteration to account for interdependencies.

⁹ For example, the level of population growth and economic activity over time begins to suggest that a different demand forecast is more likely.

9. Regulatory input

The BCUC staff should be given opportunities to review and comment during the various phases of preparation of the IRP.

10. Government policy input

The IRP should address government policy, as evidenced by legislation (e.g. efficiency standards) and stated policies. Emerging policy issues, such as increased control of air emissions, may be addressed as risk factors.

11. Regulatory review

The IRP and the action plan should be filed biennially with the BCUC for review. The review may, at the initiative of the BCUC, provide opportunities for written and/or oral public comment. After review, the BCUC will provide written commentary on the plans.

BIBLIOGRAPHY OF STANDARD REFERENCES FOR INTEGRATED RESOURCE PLANNING ("IRP")

The following list of IRP source documents has been compiled by BCUC staff for informational purposes only. Although staff believe that these sources form part of the body of standard works to which reference is often made in discussions of IRP, inclusion in the list does not imply that the statements made in the various sources reflect Commission policy. This list of sources does not form part of the BCUC IRP Guidelines.

1. Spurring Inventiveness by Analyzing Tradeoffs: A Public Look at New England's Electricity Alternatives, Clinton J. Andrews, Environmental Impact Assessment Review, 1991
2. Least Cost Planning and Utility Regulation, David Berry, Public Utilities Fortnightly, March 17, 1988
3. The Structure of Electric Utility Least Cost Planning, David Berry, Journal of Economic Issues, September 1992
4. Standard Practice Manual - Economic Analysis of Demand-Side Management Programs, California Public Utilities Commission December 1987
5. Moving toward Integrated Resource Planning: Understanding the Theory and Practice of Least Cost Planning and Demand Side Management, Prepared by Electric Power research Institute, Palo Alto, California, EPRI, EM-5065, February 1987
6. Impact Evaluation of Demand-Side Management Programs, Volume 1 A Guide to Current Practices, Electric Power Research Institute, February 1991
7. Integrating Demand-Side Management into Utility Planning, Clark W. Gellings, and William M. Smith, Proceedings of the IEEE, June, 1989
8. Least-cost Planning Regulation for Gas Utilities, Mary Ellen Fitzpatrick Hopkins, Public Utilities Fortnightly, November 1980
9. Least Cost Utility Planning: A Handbook for Public Utility Commissioners, Vols. 1 and 2, National Association of Regulatory Utility Commissioners., 1988
10. Proceedings, Fourth National Conference on Integrated Resource Planning, National Association of Regulatory Utility Commissioners, 1992
11. Proceedings, Third National Conference on Integrated Resource Planning, National Association of Regulatory Utility Commissioners, 1991
12. Northwest Power Plan 1991, Vol II. Chapter 3, Northwest Power Planning Council
13. The Role of Conservation in Least-Cost Planning, Northwest Power Planning Council, June 10, 1988

14. Discussion Paper of Gas Integrated Resource Planning, Ontario Energy Board, 1991
15. Submissions to Ontario Energy Board re: EBO 169-III
16. Handbook of Evaluation of Utility DSM Programs, Edited by Eric Hirst and John Reed, Oak Ridge National Laboratory, December 1991
17. Electric-Utility DSM Programs: Terminology and Reporting Formats, Eric Hirst and Carol Sabo, Oak Ridge National Laboratory, October 1991
18. Planning for Uncertainty: A Case Study, Systems Planning and Research, Southern California Edison Company, Technological Forecasting and Social Change, 1988

INTEGRATED RESOURCE PLANNING

GLOSSARY

This is a working draft of a glossary to support the Integrated Resource Planning Guidelines issues in February 1993 by the B.C. Utilities Commission. The glossary will be refined and updated after feedback. Comments and suggestions are welcome.

Achievable Potential - That portion of the Technical Potential for Energy Conservation that could be achieved by a given set of DSM programs.

Action Plan - A component of IRP, describing utility actions in the short-term (about two years) to meet the supply and demand objectives of the integrated resource plan.

Avoided Cost - The cost of the next utility supply resources for meeting demand. This concept has been used as a yardstick for testing individual DSM and non-utility supply options, but it is becoming less important as the IRP process develops comprehensive packages of DSM and supply resources.

Bidding - A tendering process designed to compare and evaluate non-utility supply resources. In some cases DSM resources are included in the process.

Demand-Side Management (DSM) - Deliberate effort to decrease, shift or increase energy demand. Utilities develop DSM "programs" to encourage customers to enact DSM "measures". Because of measurement difficulties and uncertainty about consumer behavior, DSM programs must be carefully "evaluated" before and after implementation to determine their full impacts.

Economic Potential - That portion of the Technical Potential for Energy Conservation that would occur if all energy using technologies were replaced with market ready substitutes that maximize economic benefits using a "social discount rate" and Social Cost.

Energy Conservation - Reduction in energy consumption due to efficiency improvements in energy using technologies (e.g. more efficient light bulb). Sometimes this definition is extended to include behavioral changes in the way technologies are used (e.g. turning off unneeded lighting).

Energy Conservation Potential - Potential Energy Conservation due to replacing existing technologies with more efficient market ready technologies. This concept has sub-categories: Technical Potential, Economic Potential, Achievable Potential.

Externality - A cost or benefit that is experienced by a third party, as a consequence of a transaction between two other parties. (e.g. A sells fuel to B for consumption in B's car, thereby polluting the air breathed by C.)

Free Rider - A party who receives some form of incentive (e.g. grant, low interest loan) for a DSM action that they would have undertaken without the incentive.

Free Driver - A party who undertakes DSM actions as a result of the program but do not participate in the program for fear of administrative hassle.

Gross Energy Demand Forecast - The amount of energy required from energy supply resources after accounting for external factors changing energy demand and assuming that there will be no extra DSM than that which already exists.

Integrated Resource Planning (IRP) - A planning process, used by regulated energy utilities, that equally compares options that involve changes in supply resources and changes in energy demand. The outcome of the process is an “integrated resource plan” (usually covering 15 to 25 years) and an Action Plan (usually two years).

Least-Cost Conservation Supply Curve - A graph showing the energy saving of individual efficiency measures on the X-axis and the total cost-per-unit-of-energy-saved on the Y-axis.

Lost Opportunity Resources - Energy DSM or supply resources with “life-cycle cost” benefits that, if not exploited promptly, are lost irretrievably or rendered much more costly to achieve. Examples include cogeneration opportunities when renovating a pulp and paper mill and extra insulation when building a new house.

Multi-Attribute Analysis - A method which allows for comparison of options in terms of all attributes which are of relevance to the decision maker(s). In IRP, common attributes are financial cost, environmental impact, social impact and risk.

Net Energy Demand Forecast - The Gross Energy Demand Forecast less the effect of all DSM.

No-Losers Test - Evaluation of DSM resources in order to identify those that would not result in an increase in energy prices, thereby ensuring that Non-Participants are no worse off. See Total Resource Cost Test, Utility Cost Test.

Non-Participants - Parties that, because they have not participated in DSM, may be worse off if such measures lead to increased energy prices.

Social Cost - Cost determined from a social perspective as opposed to a private perspective. All externalities should be included, if their monetization is feasible.

Stakeholder Collaborative - A public involvement process associated with IRP. Stakeholders are defined as groups whose interests are affected by the utility planning process. Representatives of key stakeholder groups work together with the utility’s staff in a collaborative to seek consensus and compromise in the production of the utility’s integrated resource plan. The commitment is not full-time, but collaborative members may find themselves involved in a process that involves occasional meetings and background work over several years.

Technical Potential - Energy Conservation occurring if all technologies were replaced with the most energy efficient market ready substitutes, regardless of cost.

Total Resource Cost Test - Evaluation of DSM resources in order to identify those that have a net benefit to society (see Economic Potential and Avoided Cost). DSM resources meet this test if their net benefits are sufficient to compensate all Non-Participants. See No-Losers Test, Utility Cost Test.

Utility Cost Test - Evaluation of DSM resources in order to identify those that have a net benefit to the utility. See No-Losers Test, Total Resource Cost Test.