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British Columbia Utilities Commission
Suite 410, 900 Howe Street
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Attention: Patrick Wruck, Commission Secretary

Filed online

Dear Mr. Wruck,

Re: British Columbia Utilities Commission – Review of British Columbia Hydro and Power Authority’s Performance Based Regulation Report – Project No. 1599045

This is the final argument of MoveUP in these proceedings.

MoveUP commends the final argument filed by BC Hydro. It provides an excellent analysis of the major issues that have arisen in this Review and points to the optimal outcome.

It is common ground among the experts who have provided evidence in this matter that in practice, Cost of Service Regulation and Performance-Based Ratemaking are not distinct and pristine models to be counterposed to each other. All agree that there is no “one-size-fits-all” solution. Rather, regulators have adopted approaches custom-calibrated for each utility based on its particular needs, context and circumstances, to apply a variety of tools that lie along the continuum between these two notional models. This is a highly judgment-based process of fine-tuning the regime to best achieve defined regulatory objectives.

The real issue here is what, if any, modifications should be made to the way BC Hydro rates are determined. We submit that the analysis should be performed on a “ground-up” basis, constructing a regime that is solidly founded in Hydro’s real situation, rather than a “top-down” one that seeks to custom-tailor a conceptual framework to make it better suited to the utility.

One may be mindful of the story of Procrustes, a cautionary tale about attempts to impose fixed templates onto more variegated and nuanced reality.¹

There are two key BC Hydro realities which, we submit, point to the path the Commission should take: an evolutionary approach that provides space for the development of regulatory tools and mechanisms.

First, most obvious and most remarked throughout this proceeding, BC Hydro is not a profit-seeking company. Incentive mechanisms that leverage private utility corporate objectives to achieve performance results are alien to this environment. Hydro is oriented toward maintaining affordability, along with safety and reliability. The financial incentives at the heart of more rarified versions of PBR to (as the rationale goes) better align the interests of utility and ratepayer have no purchase here. Aside from BC Hydro's corporate disinterest in maximizing shareholder returns, its executive compensation is governed by the *Public Sector Employer's Act* and the mechanisms to apply government policy to employee compensation throughout the province's broad public sector. Under these rules, BC Hydro cannot provide financial bonuses to its executive and management staff based on either individual or collective performance.

When it comes to private utility-founded financial incentive mechanisms, as the saying goes, "that dog won't hunt".

Second, BC Hydro rate-setting has only recently returned to Commission oversight after a long hiatus. This Review does not find BC Hydro with a well-established and mature regulatory relationship with the Commission or interveners, which would bring a more thorough understanding of the intricate workings of the utility and a more solid basis to "loosen the leash" and decrease the granularity of oversight and information-flow.

Aside from these considerations, and perhaps most important, we submit that it may be counter-productive to apply regulatory models inherited from (in retrospect) the simpler days of the late 20th Century, whether COS or PBR, at this flexion point in energy policy and practice in the face of the rapidly-escalating climate emergency.

Both Cost of Service Regulation and Performance-Based Regulation are the products of simpler eras, in terms of the imperatives facing utilities, regulators and society as a whole when it comes to the provision and use of energy. The Commission's experience with PBR goes back a quarter of a century. Cost of Service Regulation is far older than that, but neither is novel and neither emerged from the challenges of our own time.

In their pure forms, both COS and PBR are "steady-state" regimes, designed to maintain equilibrium and incremental performance improvements in times of relatively linear change. Neither was designed to address the most fundamental issues now facing energy regulators worldwide – above all, how to make the complex transitions that are essential to mitigate climate change and its impacts on humanity over the next few decades. The

¹ <https://www.mythweb.com/encyc/entries/procrustes.html>

pursuit of operating efficiencies is always a desirable goal, but an increasingly remote one from the most compelling problems. BC Hydro will need resources and flexibility to play its central role in our rapid transition to a sustainable society.

Neither model was designed to answer the most important questions in the 21st Century: all the more need to adopt a resilient approach to refashioning utility regulation. We submit that attending to this problem is at the heart of fulfilling the Commission's public interest mandate.

This dimension of the mandate is well-established. It was recognized by the BC Court of Appeal a quarter century ago, in *British Columbia Hydro & Power Authority v. British Columbia (Utilities Commission)* [1996] B.C.J. No. 379. This decision is often cited as authority for a narrow reading of the Commission's jurisdiction. To the extent that it denied authority to oversee utilities' integrated resource planning, it was legislatively over-ruled with the enactment of section 44.1 of the *Utilities Commission Act*. Aside from that, it confirmed a broad mandate to protect the public interest, including in matters of environmental impact and energy-use transition. For example:

35 It appears reasonable to assume the purpose of the Guidelines is to look beyond a simplistic view of utility planning as one limited to selecting the resources needed to meet anticipated demand and in doing so, to reject an equally simplistic view of regulation as ensuring that service is provided at the least cost to the consumer. It has been evident for some years now that environmental considerations are important in the formulation of the opinion represented by the phrase "public convenience and necessity". To the same effect, conservation and management of energy use is now recognized in what is known as demand side management. The wisdom of all this does not appear to be an issue.

Tribunals like the Commission are sometimes characterized as "economic regulators". We point out that this phrase is generally applied as though it read "financial regulators", quite a different thing. Economic regulation is a broader process that stretches far beyond the bounds of financial regulation. The environmental and social impacts of improvident use of energy resources are economic impacts.

PBR for the FortisBC utilities (beginning with BC Gas in the mid-nineties) was not designed as a blueprint that was devised and then subsequently applied to the utilities, but was developed over time to provide solutions to issues raised in the course of rate-setting cycles. Even then, applying PBR mechanisms to their capital programs has been a much-vexed problem, perhaps best seen as still a work-in-progress.

We submit that the same approach should be applied to the development of rate-setting processes for BC Hydro. The evolution of the regulatory process will need to be resilient and capable of meeting rapidly-changing imperatives over the next couple of decades. We submit that locking-in long-term financial constraints for the province's main electricity provider does not look like a sound approach at this juncture, with all respect.

We endorse that modifications to the regulatory process that are recommended in BC Hydro's final argument, for these reasons and for the reasons advanced by Hydro.

All of which is respectfully submitted.

Yours very truly,

ALLEVATO QUAIL & ROY

A handwritten signature in blue ink, appearing to read "Jim Quail", written in a cursive style.

per **Jim Quail**
Barrister & Solicitor