CEC
British Columbia

October 24, 2019

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Patrick Wruck, Commission Secretary and Manager, Regulatory Services

Dear Sirs/Mesdames:

Re: British Columbia Utilities Commission – An Inquiry into the Regulation of Municipal Energy Utilities ~ Project No. 1599027

Pursuant to Order G-177-19 establishing an Inquiry into the Regulation of Municipal Energy Utilities the Commercial Energy Consumers Association of BC provides the following submissions for the Commission's review and consideration.

Yours truly,

COMMERCIAL ENERGY ASSOCIATION OF BRITISH COLUMBIA

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INTRODUCTION

The Commercial Energy Consumers Association of BC (CEC) represents the interests of ratepayers consuming energy under commercial tariffs in applications before the BC Utilities Commission (BCUC or Commission).

By Order G-177-19, dated August 1, 2019, the British Columbia Utilities Commission (BCUC) established an inquiry to examine the regulation of energy utilities affiliated with municipalities and regional districts (Inquiry). The Inquiry will explore issues related to ownership structures and operational arrangements of utilities affiliated with municipalities and regional districts, including the appropriate regulatory status of such organizations under the *Utilities Commission Act* (UCA) in order to provide clarity to the BCUC, utilities and municipalities.

The CEC considers the protection of ratepayers and the public interest to be of primary importance when considering the regulation of municipal energy utilities.

CEC submissions to BCUC points of inquiry

Upon the completion of this Inquiry, the BCUC will consider if it is appropriate or necessary to:

i) ***seek advance approval from the Government of BC to offer a class of cases exemption to municipalities and regional district energy systems in certain circumstances***; and/or

CEC Response:

The CEC considers that exemption from regulation for municipal energy systems has the potential to result in disadvantageous consequences for both municipal energy system ratepayers and for other utility ratepayers.

Consequences for municipal utility ratepayers may include an inability to choose the energy solution that best suits the consumer, little recourse for issues affecting energy rates, costs and efficiency, and potentially monopolistic behaviour that could impact the ratepayer and public interest. These consequences are especially relevant to commercial energy consumers.

Ratepayers of other, existing utilities may face costs arising from the utility's obligation to serve and the risk of stranded assets, or assets less cost effectively used than might otherwise be the case.

In Order G-104-18, the Panel found that the only entities that can benefit from the Municipal exclusion are municipalities and regional districts.[1]

The CEC notes that ministerial exemptions are a solution provided under the UCA, on application from the BCUC, which would or could provide a level of oversight.

Consequently, the CEC does not recommend the creation of a class of cases exemption for Municipal Energy Utilities.

[1] Order G-104-18, Appendix A, page 9

ii) make a recommendation to the Government of BC to review the definition of a "public utility" within the UCA as it relates to such entities.

CEC Response:

The CEC notes that there have been a number of recent BCUC proceedings that involve the definition of public utility under the UCA. In Order G-177-19 establishing this Inquiry, the BCUC states that there appears to be some ambiguity regarding public utilities.

The CEC understands that municipalities are creations under provincial law.

The CEC submits that clarification of ambiguities would be useful to all parties.

The CEC therefore supports the making of a request to the Government of BC to review the definition of a public utility within the UCA as it relates to municipal energy utilities to determine if a modification is warranted.

The BCUC requests registered interveners provide written submissions to address the following:

1) Whether a utility affiliated, in some way, with a municipality or regional district is considered a public utility as defined by section 1 of the UCA. Forms of affiliation include, but may not be limited to:

a. The utility's assets are owned by a corporation of which the municipality or regional district is a shareholder or the sole shareholder;

b. The utility's assets are owned by a partnership of which the municipality or regional district is a partner, a limited partner or a general partner;

c. The utility's assets are owned by a third party, but the municipality or regional district has granted a franchise agreement, a licence and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility;

d. The utilities' assets are owned by a municipality or regional district but are operated by a third party; and

e. The municipality or regional district, by agreement with the utility owner, sets or approves the setting of rates for the utility.

CEC Response:

The CEC's primary consideration in this proceeding is the protection of ratepayers and the public interest. The CEC considers that a key objective of the UCA is the protection of the public interest by regulating public utilities to ensure that they provide a service that is adequate, safe, efficient, just and reasonable.

The CEC notes there are a number of elements of the regulatory regime under the UCA that safeguard the interests of ratepayers and the public interest.

The CEC is of the view that safeguarding the interests of ratepayers and the public interest is not greatly affected by the ownership or operation structure of a municipal energy utility.

The CEC is of the view that the primary drivers impacting ratepayers and the public interest have to do with choice of energy system and the potential forced or mandated use of an energy system when cost effective and environmentally sound alternatives exist or may exist in the future.

Provided that appropriate safeguards for ratepayers and the public interest are in place, the CEC does not take a strong position on the nature of the affiliation of a utility with a municipality or regional district.

The CEC notes that Commission regulated utilities can present similar issues for ratepayers and the public interest. The CEC's view is that a focus on the substantive issues around the types of energy systems and types of conservation and efficiency could be a valuable complement to the inquiry in this proceeding.

CEC Submissions

The CEC considers that there are several subjects, as follows, that are relevant to this inquiry and provides further submissions in this document.

- Utilities Commission Act
- Municipal Exclusion and Ministerial Exemption
- Existing CPCN holders and obligations
- Mandatory connection
- Monopoly and Competition
- Conflict of Interest
- Public Interest and Protection of Consumers

Summary Position

The CEC supports the Regulation of Municipal Energy Utilities inquiry and the desire to seek input into the regulatory process for Municipal Energy Utilities.

The CEC's primary purpose is to safeguard the interests of commercial ratepayers.

In general, the CEC is guided by the provisions of the Utilities Commission Act (UCA) which state that a public utility must provide a service to the public that is in all respects adequate, safe, efficient, just and reasonable,[2] and that a public utility must provide service without undue discrimination or delay to all persons who apply for service, are reasonably entitled to it and agree to pay the rates established under the UCA.[3]

[2] Utilities Commission Act, clause 38
[3] Utilities Commission Act, clause 39

The CEC submits that these principles are valid and necessary to protect the interests of any and all energy consumers and future energy consumers in BC.

The CEC further submits that these principles apply and should apply to any public utility, and could well apply to any municipal energy utility.

The CEC provides the following submissions for the Commission's review and consideration.

Utilities Commission Act

The CEC considers that the Utilities Commission Act (UCA) provides safeguards to ratepayers including commercial energy consumers and the public interest that are valuable and necessary. The CEC is of the view that these safeguards should not be compromised when considering the regulation of municipal energy utilities whether that be by municipalities, the provincial government or the Commission.

Section 38 of the Utilities Commission Act (UCA) states that a public utility must provide a service to the public that is in all respects adequate, safe, efficient, just and reasonable.[4]

Section 39 of the UCA states that a public utility must provide service without undue discrimination or delay to all persons who apply for service, are reasonably entitled to it and agree to pay the rates established under the UCA.[5]

The paramountcy of the UCA is established in Section 121 of the UCA which provides that nothing in or done under the Community Charter or Local Government Act supersedes or impairs a power conferred on the Commission or an authorization granted to a public utility.[6]

This paramountcy is confirmed in the Community Charter, which provides that the provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.[7]

A public utility, as defined in the UCA, does not include a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries.[8]

The CEC submits that a public utility is well defined under the UCA, and that the UCA is applicable to public utilities including those of varying levels of ownership and affiliation with a municipality or regional district.

The CEC submits that the ability of a municipality or regional district to provide utility services within its own boundaries is also well defined in the UCA.

The CEC notes that the paramountcy of the UCA, as a provincial enactment, is acknowledged in the Community Charter.

[4] Utilities Commission Act, clause 38
[5] Utilities Commission Act, clause 39
[6] Utilities Commission Act, clause 121(a)
[7] Community Charter, clause 10(1) http://www.bclaws.ca/civix/document/id/complete/statreg/03026_10
[8] Utilities Commission Act, clause 1

In order G-104-18, the Sustainable Services Ltd. (SSL) proceeding, the Commission states that the scheme of the UCA acknowledges that there may be circumstances where an entity is caught by the definition of public utility yet the rationale for regulation is not compelling because the public utility has little or no ability to exercise monopolistic behaviour to the detriment of ratepayers and the public interest.[9]

The CEC notes that the Commission states in the current inquiry that there appears to be ambiguity in the UCA with regard to ownership and operational structures available to a municipality or regional district to provide energy services.[10]

In the AES Inquiry Report, the Commission stated

> "The definition of public utility is set out in the *UCA* but, given the discussion on the economic purposes of regulation, applying the legal definition of public utility does not always lead to an outcome that makes the most economic sense. The Panel notes that the *UCA* was developed at a time when many of the technologies at issue in this Proceeding were not contemplated. The current energy market requires a practical definition of public utility."[11]

The CEC notes that there are new emerging technologies for energy systems and for conservation and efficiency. The CEC finds that substantive issues driving elements of movement to capital intensive, isolated, district energy systems and concomitant obligations for use may not be so appropriate in the new emerging circumstances of the built-environment of the future.

The CEC notes that recent proceedings, including those listed in the Order, have brought forward issues and complaints related to matters of interpretation and paramountcy between the UCA and the Community Charter or Vancouver Charter.[12]

The CEC submits that the filing of recent applications indicates that there may well be a perception of ambiguity in the provisions of the UCA as it applies to municipal energy utilities. The CEC further submits that clarification is desirable as frequent, ongoing applications may not be the best use of the resources of the BCUC, applicants or intervenors.

The CEC is supportive of a review of the definition of a public utility under the UCA by the Government of BC. The CEC submits that such a review should include full consideration of the impacts on ratepayers, existing utilities and CPCN holders.

[9] Order G-104-18, Appendix A, page 8
[10] Order G-177-19, page 1
[11] GVSDD Exhibit B-1 page 7
[12] Order G-177-19, page 1

Municipal Exclusion and Ministerial Exemption

The CEC considers that the municipal exclusion under the UCA applies only to municipalities and regional districts, and not to other entities such as corporations that may be affiliated with municipalities.

The CEC is of the view that the regulation of municipal energy utilities utilizing principles in the UCA could be a valuable component of the safeguarding of ratepayers and the public interest.

The UCA provides a definition that states a

> "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 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 … but does not include a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries.[13]

In the Sustainable Services Ltd. Geothermal Energy System Status as Public Utility proceeding (SSL proceeding), the Panel found that when the words of the Municipal exclusion are read in their entire context and in their ordinary and grammatical sense, the only entities that can benefit from the Municipal exclusion are municipalities and regional districts … and that SSL is a corporate entity and is not a municipality or regional district.[14]

In the SSL proceeding, the Panel found that the City has entered into an agreement with SSL to provide the service but that does not grant SSL the same legal status as a municipality, and therefore the Panel cannot make the finding that SSL can benefit from the Municipal exclusion.[15]

The BCUC states that SSL is a public utility as defined in section 1 of the UCA and is therefore subject to regulation under the UCA by the BCUC.[16]

The Greater Vancouver Sewerage and Drainage District (GVS&DD) states that the proposed effluent heat recovery project would fall within the *UCA* definition of "public utility" and no existing exclusion or exemption from public utility status would apply.[17]

The CEC submits that the UCA is clear that the Municipal Exclusion only applies to municipalities and regional districts, and not corporate entities providing services to them.

The CEC submits that if a broadening of the Municipal Exclusion is deemed appropriate, then a provincially legislated change to the UCA would be required, or a Commission recommended exemption could apply.

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[13] Utilities Commission Act, clause 1 Definitions
[14] Order G-104-18, Appendix A, page 9
[15] Order G-104-18, Appendix A, page 9
[16] Order G-104-18, page 2 https://www.bcuc.com/Documents/Proceedings/2018/DOC_51754_G-104-18_SSL-StatusAsPublicUtility-Reasons.pdf
[17] GVSDD Exhibit B-1 page 6

The CEC notes that the UCA provides a solution for the situation where a person falls within the definition of "public utility", but regulation as a public utility is not warranted, as follows:[18]

The Commission may, on conditions it considers advisable, with the advance approval of the Minister responsible for the administration of the *Hydro and Power Authority Act,* exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act.[19]

The scheme of the UCA acknowledges that there may be circumstances where an entity is caught by the definition of public utility yet the rationale for regulation is not compelling because the public utility has little or no ability to exercise monopolistic behaviour to the detriment of ratepayers and the public interest. In those situations, the UCA allows the BCUC, with the advance approval of the responsible Minister, to grant exemptions in whole or in part from regulation under the statute.[20]

The GVS&DD states “Although GVS&DD would fall within the *UCA* definition of "public utility", it should be exempt from public utility regulation because regulation would provide no public benefit. GVS&DD would not be a natural monopoly with respect to the provision of energy to LEC and any contract between GVS&DD and LEC will be subject to approval by their respective elected governing bodies.”[21]

The CEC submits that a ministerial exemption is available for project proponents and may be an appropriate way for them to proceed.

The CEC submits that a significant broadening of the municipal exclusion to include municipal energy utilities may have far reaching consequences and may impact ratepayers and the public interest.

BC Hydro and Utility holders of Certificate of Public Conveniences (CPCN)

The CEC submits that the potential limitation to existing utilities and CPCN holders is an important issue that the Commission should address with regard to the development of municipal energy utilities, as well as existing utilities and CPCN holders’ obligations.

The CEC notes that existing utilities in BC are legally obligated to provide service to energy consumers in their appointed services territories. The CEC submits that this legal obligation is not extinguished by the desire of another actor to establish an energy utility.

The obligation to serve also includes an obligation to *plan to serve*, because the utility is responsible for its service territory's entire needs - now and in the future.[22]

The CEC considers that the obligation to plan to serve is a critical element when viewing the impact of new municipal energy utilities of existing CPCN holders. CPCN holders have done the necessary planning to provide reliable service in their service territory, and made infrastructure investments in anticipation of future load growth.

[18] GVSDD Exhibit B-1 page 7
[19] Utilities Commission Act, clause 88(3)
[20] Order G-104-18, Appendix A, page 8
[21] GVSDD Exhibit B-1 page 6
[22] Indigenous Utility Inquiry, Exhibit A-8 Hempling Utility Regulation Report, page 9

Risk ensues if a municipal utility removes customer load from another utility's service territory, potentially leaving the infrastructure assets oversized or redundant. The cost for these assets would be recovered through higher rates for remaining ratepayers.

In the section of the UCA that deals with the Relationship with Local Government Act, the UCA states:

> Nothing in or done under the Community Charter or the Local Government Act supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or relieves a person of an obligation imposed under this Act or the Gas Utility Act. And, in this section, "authorization" means a certificate of public convenience and necessity issued under section 46.[23]

The CEC emphasizes that the actions of a municipality or regional district with regard to establishing a municipal energy utility, does not relieve an existing utility or CPCN holder of the obligation to provide service.

FEI has been operating in the City of Vancouver (COV) under a CPCN since 1955. FEI has since relied upon its CPCN and associated legal rights for approximately 60 years in investing in the distribution system and planning its operations. The provision of natural gas for heating represents a significant means by which FEI recovers the cost of its investments. FEI submits that it would be neither legal, nor in the public interest for the Commission to approve a franchise that derogates from FEI's existing rights. Utilities should be able to rely on a CPCN as the basis for having an opportunity to recover invested capital.[24]

In the Indigenous Utility Inquiry, BC Hydro stated:

> 'If BC Hydro customers were eligible to leave BC Hydro for a new provider of electric resources, this would result in costs for BC Hydro's remaining ratepayers. These costs arise because, under the UCA, BC Hydro has an obligation to provide service. As a result, BC Hydro has planned and built its system to ensure adequate and reliable supply to current and future customers. Ensuring adequate and reliable supply requires making large scale, long-term investments in electric utility assets, the cost of which is recovered over time from current and future ratepayers. If customers leave BC Hydro for a new utility provider, they will no longer be contributing to the recovery of those costs. As a result, the assets may be underutilized relative to plan and the recovery of cost associated with the assets will be spread over a smaller group of customers. This increases costs for remaining customers'.[25]

BC Hydro points out that regardless of the cause of stranded assets, once they arise, the associated cost is borne either by the utility shareholder or by the utility's remaining customers.[26]

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[23] Utilities Commission Act, clause 121(2)
[24] 2015 NES NEFC CPCN Proceeding FEI Final Argument, Creative Energy, Page 8
https://www.bcuc.com/Documents/Arguments/2015/DOC_44674_09-25-2015_FEI_Final-Argument.pdf
[25] Exhibit C2-3, response to BCUC IR 1.2.1
[26] Exhibit C2-3, response to CEC IR 1.2.3

The CEC notes that the obligation to provide service includes the need to plan for future requirements and to make infrastructure investments accordingly. Thus, infrastructure impacts are not limited to the immediate area of the stranded assets. Upstream infrastructure investments may have been made in anticipation of future demand and these assets could become oversized or redundant, increasing costs for remaining customers.

The CEC submits that legislation to amend the UCA would be required to resolve the challenge of the existing utility's obligation to provide service in the event of the establishment of a municipal energy utility, particularly with the scope to significantly supplant or displace existing utility service and/or existing or future conservation and efficiency potential.

The CEC submits that the costs to existing or remaining and/or future ratepayers may be significant in the event of the establishment of a municipal energy utility.

The CEC submits that the impact on commercial energy consumers may be particularly significant because commercial ratepayers do not have recourse in the form of a vote.

The CEC recommends that the impacts on existing utilities and their obligations to provide service, along with the safeguarding of existing and remaining ratepayers, should be given substantial weight in the considerations of the Commission in this Inquiry.

Mandatory Connection

The CEC considers that mandatory connection, use and prohibition of alternatives to municipal energy utilities limit choice for energy consumers and may not be in the public interest. This is especially the case for commercial energy consumers who do not have a vote, and therefore no official recourse in the event of disadvantageous rates or policies.

The CEC notes the following BCUC discussion in the Creative Energy Northeast False Creek CPCN Decision:

> The Panel finds that while the City of Vancouver (CoV) may have jurisdiction to invoke mandatory connection, through its policies and zoning conditions or bylaws, the Commission has jurisdiction to consider mandatory connection in the context of franchise agreements and related and ancillary agreements, for the purposes of compliance with section 45(8) of the UCA. In that context, the Commission has jurisdiction to determine whether a mandatory connection, if it is a provision in a franchise agreement specifically empowering a utility, is necessary for the public convenience and properly conserves the public interest.[27]

The CEC draws the Commission's attention to the following statements in CEC's Final Submissions in the Creative Energy 2015 NES NEFC CPCN Proceeding:

> The mandatory connections requirements set out in the Franchise Agreement eliminate flexibility for developers and future ratepayers in terms of sourcing alternative, more efficient

[27] Application for a Certificate of Public Convenience and Necessity for a Low Carbon Neighbourhood Energy System for Northeast False Creek and Chinatown Neighbourhoods of Vancouver, Project No. 3698836 (Creative Energy NES-NEFC-CPCN) Decision, page 48

> technologies to conserve energy and/or more efficient alternative technologies which may exist today, such as renewable natural gas, thereby limiting opportunity for energy efficiency and conservation. Furthermore, the potential for near zero or net zero buildings in the future would be compromised by the locked in costs of a mandatory connection to a large central heating systems, which would not necessarily be needed. The locked in proposal of the Applicant is inconsistent with Clean Energy Act requirements to encourage low carbon fuels. The CEC submits that by prohibiting potentially viable alternative (sic) and or by adding costs that are unnecessary for alternative building approaches the public interest will not be conserved.[28]

The CEC submits that mandatory connection bylaws may have the effect of unacceptably limiting choice for energy consumers and may not be in the public interest.

The CEC reiterates its view that commercial energy consumers are particularly vulnerable.

The CEC recommends that mandatory connection to municipal energy systems could appropriately be regulated under the UCA, and remain within the purview of the BCUC.

Monopoly / Competition

The CEC notes that mandatory connection and/or other contractual obligations (such as those in the Creative Energy NEFC District Energy System) can have the effect of creating a monopolistic environment which may not result in the best opportunities that could otherwise be afforded by competition.

Because a public utility tends to represent a single supplier of an essential product or service, its customers are basically captive, lacking the ability to readily change providers, and the demand curve is "inelastic", such that a change in price will not result in an equivalent change in demand.[29]

Regulation exists to protect the public from potential monopolistic behaviour on the part of a public utility while ensuring the continued quality of an essential service. It is the regulator's function to prevent the abuse of monopoly power, so that customers have access to the utility product or service at a fair price, but at the same time allow the utility the opportunity to earn a fair return on its investment so that it can continue to operate and attract the capital required to sustain and/or grow its business.[30]

Regulation exists to protect consumers against the abuse of monopoly power but, in the Commission Panel's view, the superior protection for consumers is the competitive marketplace.[31]

Hempling notes that competition in a market causes each seller to operate as efficiently as technology and human ability allow. Without competitive pressure, a monopoly can become inefficient—charging

[28]Creative Energy NES-NEFC-CPCN, CEC Final argument, page 25
[29] AES Inquiry Report, page 8 https://www.bcuc.com/Documents/Decisions/2012/DOC_33023_G-201-12_FEI-AES-Inquiry-Report_WEB.pdf
[30] AES Inquiry Report, page 8
[31] AES Inquiry Report, page 14

excessive prices and providing low-quality service – and may discriminate, because discriminating is profitable.[32]

The CEC submits that removing competition can have other potential detriments. For example, monopolistic situations may not facilitate the greatest reduction in greenhouse gases, and the benefits may be lower than might otherwise develop with greater competition.

The CEC reiterates the following paragraphs in the CEC's Final Submissions in the original Creative Energy NEFC proceeding.

> If other heating systems such as geo-exchange heating are potential solutions at a building scale and at a neighbourhood scale then it would be in the public interest to have them available and competing. Exclusion of these alternative heating solutions does not conserve the public interest.[33]

And,

> If all of the developers or a large percentage of the developers [chose an alternative that had fewer emissions and was cost-competitive for end-users] and did so to meet CoV emissions requirements then this would be in the public interest as all of the criteria could be met without having to select hot water service as the only alternative. It is possible that we can have such conditions now and it would certainly be possible that these conditions could improve over the next 20 to 30 years making a substantial difference.[34]

FEI states the following in its Final Argument in the Creative Energy 2015 NES NEFC CPCN Proceeding:

> The Commission determined in the AES Inquiry Report that competition among energy providers is beneficial for consumers and should not be hindered. The proposed franchise agreement not only hinders competition, it essentially eliminates it altogether. The absence of competition for each new development over time will mean a loss of dynamic efficiency benefits that currently promote cost reduction, service quality improvements and innovation. The value of maintaining the existing level of consumer choice among competing energy options, a topic covered in the expert report of Dr. Roger Ware, weighs heavily against approving the NEA."[35]

The CEC submits that there can be a public interest benefit in allowing developers the freedom to act in accordance with their own business models and personal interests from cost and energy-efficiency perspectives as well as from the basic public interest in facilitating free will, which should not be constrained without exceptionally good reason.[36]

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[32] Indigenous Utility Inquiry, Exhibit A-8 Hempling Utility Regulation Report, page 5
[33] Creative Energy NES-NEFC-CPCN, CEC Final Submission dated September 25, 2015, Page 28
[34] Creative Energy NES-NEFC-CPCN, CEC Final Submission dated September 25, 2015, Page 29
[35] Creative Energy NES-NEFC-CPCN, FEI Final Argument, Page 6
[36] Creative Energy NES-NEFC-CPCN, CEC Final argument, page 25

The CEC submits that the impairment of customer choice is a significant public interest issue and should not be diminished without exceptional cause.

The CEC submits that regulation by the BCUC of a mandatory, monopoly requirement under the UCA, or some other structure could provide some protection for energy consumers in BC which might not otherwise occur in the absence of competition.

The CEC submits that in the context of municipal energy utilities, monopolies or effective monopolies may meet the objectives of the municipality and the utility, but may not be in the public interest on other dimensions. This is especially the case for commercial energy consumers.

The CEC notes, as stated above, that regulation exists to protect consumers against the abuse of monopoly power.

The CEC recommends that the Commission give considerable weight to the protection of energy consumers and the public interest from monopolistic practices.

Conflicts of Interest

The CEC is of the view that potential exists for conflict of interest in the administration of municipal energy utilities.

In the Creative Energy 2015 NES NEFC CPCN Proceeding, the CEC expressed its concern with respect to the potential for conflict of interest, noting that Creative Energy is owned by a developer with a competitive interest. CEC refers to section 4.3(b) of the NEA, which obligates Creative Energy to provide, on demand, CoV with confirmation that a building's design is compatible with the NE Bylaw and applicable CoV measures. CEC also questions section 3 of the Connection Agreement, which outlines the processes and requirements proposed to achieve compatibility between the building system and the NES.[37] (references Prior Proceeding, Oral Hearing Transcript, pp. 217–220. 72 Ibid., pp. 220–223. 73 Prior Proceeding, Exhibit B-31, pp. 8–11.)

Having the CE public utility as the monitor, data collector and in part assessor of whether or not developers and builders are compliant with Co V requirements sets up the potential for conflicts of interest and potentially does not conserve the public interest.[38]

The CEC submits that the potential for conflict of interest should weigh heavily in the determination of appropriate measures for regulation of municipal energy utilities.

The Public Interest and Protection of Consumers

The CEC regards the protection of ratepayers and the public interest to be of primary importance when considering the regulation of municipal energy utilities.

[37] 06-15-2016_Creative_NEF-NEA_Decision, page 16
[38] CEC Final argument, Creative Energy Amended application, page 34

In the AES Inquiry Report the Commission Panel comments on the importance of ratepayer protection and monopolistic behavior.

> The Commission Panel agrees that the purpose of the UCA is to regulate natural monopolies and protect consumers from the exercise of economic power. The Commission Panel is of the view that a reasonable interpretation should consider the market context within which the proposed service or facility will exist, the degree to which natural monopoly characteristics are present and whether the consumer requires protection. The Commission Panel finds that in general, a provider of services which meets the definition of a public utility in the UCA, and where natural monopoly characteristics are present and consumers require protection, will be subject to regulation.[39]

They also point out:

> Regulation is costly, time-consuming, and limited by informational asymmetries. It is only in natural monopoly situations where consumer protection is needed that these limitations are outweighed by the benefits of regulation. Based on the above, the Commission Panel finds as a fundamental principle that regulation is only appropriate where required and is driven by the inability of competitive forces to operate with greater efficiency and effectiveness than a sole service provider.[40]

The Commission identified the following Key Principles:

i) Where regulation is required use the least amount of regulation needed to protect the ratepayer.
ii) The benefits of regulation should outweigh the costs.[41]

In the Creative Energy 2016 Restated and Amended NEFC NEA proceedings, the CEC submitted that there is a public interest in allowing developers the freedom to act in accordance with their own business models and personal interests from cost and energy-efficiency perspectives as well as from the basic public interest in facilitating free will, which should not be constrained without exceptionally good reason.[42]

The CEC submits that regulation of public utilities, potentially including municipal energy utilities is very important in protecting consumers from the potential disadvantages of monopolies and preserving the public interest. Consumers within the service area of the utility may be affected by limited energy choices due to a lack of competition; and the impact of a municipal energy utility may extend far beyond the boundaries of the municipality, as ratepayers outside the area may be required to pay more for infrastructure investments made to support future growth.

[39] AES Inquiry Report, page 15
[40] AES Inquiry Report, page 14
[41] AES Inquiry Report, page 18
[42] Creative Energy Restated and Amended Northeast False Creek and Chinatown Neighbourhood Energy Agreement Application, CEC Final Submissions, 3-18-2016, page 25

The CEC submits that the interests of commercial energy consumers are especially important in the regulation of municipal energy utilities, as they don't have a vote and therefore have no recourse to address issues regarding rates or other impacts.

The CEC recommends that the safeguarding of energy consumers and preserving the public interest be given substantial weight by the Commission when considering the regulation of municipal energy utilities.

Conclusion

The CEC supports the Regulation of Municipal Energy Utilities inquiry (Inquiry) and the desire to seek input into the regulatory process for Municipal Energy Utilities.

The CEC considers that the Utilities Commission Act (UCA) provides safeguards to ratepayers and the public interest that are valuable and necessary. The CEC is of the view that these safeguards are of paramount importance and should not be compromised when considering the regulation of municipal energy utilities.

The CEC submits that it is appropriate to regulate public utilities, including municipal energy utilities through the BCUC, which is the current means of managing regulation under UCA. The Utilities Commission Act should be supported and adhered to accordingly. It is also possible for provincial governments to consider options for protecting consumer and public interest in the context of municipal interest in energy systems.

The CEC considers that exemption from regulation for municipal energy systems could result in consequences including lack of choice, rate structures, and monopolistic behaviour that may be detrimental to ratepayers and the public interest. These consequences are especially relevant to commercial energy consumers.

Consequently, the CEC does not recommend the creation of a class of cases exemption for Municipal Energy Utilities.

The CEC is supportive of a review of the definition of a public utility under the UCA by the Government of BC. The CEC submits that such a review should include full consideration of the impacts on ratepayers and existing utilities and CPCN holders.

The CEC is of the view that safeguarding of the interests of ratepayers and the public interest is not greatly affected by the ownership or operation structure of a municipal energy utility. Provided that appropriate safeguards for ratepayers and the public interest are in place, the CEC does not take a strong position on the nature of the affiliation of a utility with a municipality or regional district.

The CEC considers that the municipal exclusion under the UCA applies only to municipalities and regional districts, and not to other entities such as corporations that may be affiliated with municipalities.

The CEC is of the view that the regulation of municipal energy utilities under the UCA is a valuable component of the safeguarding of ratepayers and the public interest.

The CEC submits that a broadening of the municipal exclusion to include municipal energy utilities may have far reaching consequences and may not be in the public interest.

The CEC submits that the potential limitation to existing utilities and CPCN holders is an important issue that the Commission should address with regard to the development of municipal energy utilities, as well as CPCN holders' obligations. The CEC submits that the obligation to provide service is not extinguished by the desire of another actor to establish an energy utility.

The CEC recommends that the impacts on existing utilities and CPCN holders and their obligations to provide service, along with the safeguarding of existing and remaining ratepayers, should be given substantial weight in the considerations of the Commission in this inquiry.

The CEC submits that mandatory connection, use and/or alternative prohibition bylaws may unacceptably limit choice for energy consumers and may not be in the public interest. The CEC further submits this is especially the case for commercial consumers of energy, because they do not have a vote and therefore have no recourse.

The CEC recommends that mandatory connection to municipal energy systems should continue to be regulated under the UCA, and remain within the purview of the BCUC.

The CEC submits that the impairment of customer choice is a significant public interest issue and should not be diminished without exceptional cause. The CEC submits that in the context of municipal energy utilities, monopolies or effective monopolies may meet the objectives of the municipality and the utility, but may not be in the public interest. The CEC notes that regulation exists to protect consumers against the abuse of monopoly power.

The CEC recommends that the Commission give considerable weight to the protection of energy consumers from monopolistic practices.

The CEC submits that the potential for conflict of interest should weigh heavily in the determination of appropriate measures for regulation of municipal energy utilities.

The CEC submits that regulation of municipal energy utilities is very important in protecting consumers and preserving the public interest. The CEC submits that the interests of commercial energy consumers are especially important in the regulation of municipal energy utilities, as they don't have a vote and therefore have no recourse to address issues regarding rates or other impacts.

The CEC recommends that the safeguarding of energy consumers and preserving the public interest be given substantial weight by the Commission when considering the regulation of municipal energy utilities.