



Allevato Quail & Roy
BARRISTERS AND SOLICITORS

AQR file no. 20-121
Susanna Allevato Quail
direct (604) 424-8637
email saquail@aqrlaw.ca

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British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Ms. Marija Tresoglavic, Acting Commission Secretary

filed online

Dear Ms. Tresoglavic:

Re: Inquiry into the Regulation of Safety

We write to provide input on behalf of the intervenor MoveUP in response to the topics raised in Appendix B to Order G-241-20. This submission is presented primarily from the perspective of occupational health and safety of the professional workforce of the regulated public utilities FortisBC Energy Inc. (FEI), FortisBC Inc. (FBC), BC Hydro, and the Insurance Corporation of British Columbia (ICBC).

1. What is the BCUC's jurisdiction with respect to the regulation of safety and what aspects of a public utility's activities does it apply to?

Broadly speaking, ensuring safety is one of the cornerstones of the “regulatory compact” that underlies the Commission’s statutory mandate:

The BCUC's mission is to ensure that ratepayers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates, and that shareholders of those utilities are afforded a reasonable opportunity to earn a fair return on their invested capital.¹

¹ <https://www.bcuc.com/about/who-we-are.html>

Section 23(1)(g) of the *Utilities Commission Act* (the “*Act*”) captures this leg of the regulatory compact:

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.

In principle, the role of the regulator in relation to accountability for safety is no different than its role in relation to the oversight of other utility functions. As the Court of Appeal noted in *British Columbia Hydro & Power Authority v. British Columbia (Utilities Commission)*²:

56 It is only under s. 112 of the *Utilities Act* that the Commission is authorized to assume the management of a public utility. Otherwise the management of a public utility remains the responsibility of those who by statute or the incorporating instruments are charged with that responsibility.

....

58 Taken as a whole the *Utilities Act*, viewed in the purposive sense required, does not reflect any intention on the part of the legislature to confer upon the Commission a jurisdiction so to determine, punishable on default by sanctions, the manner in which the directors of a public utility manage its affairs.

The role of the Commission is one of oversight and accountability and the enforcement of the regulatory compact (and other statutory principles) by setting standards and rates, authorizing capital expenditures on behalf of ratepayers, and so on. The Commission does not tell management how to manage the company, but it ensures that the end result conforms with standards of performance, cost-effectiveness, equity and accountability. That applies to all regulated dimensions of the company’s activity, including its adherence to safety requirements.

² [1996] B.C.J. No. 379, 117 W.A.C. 271, 20 B.C.L.R. (3d) 106

The fact that some aspects of the Commission's jurisdiction are mirrored in other tribunals and agencies does not in itself relieve the Commission of responsibility for carrying out its full mandate for the benefit and protection of the public. A prime example is the obligation of regulators in Canada to satisfy themselves that projects satisfy the Crown's constitutional obligations to First Nations whose rights and interests may be affected.

Aside from fundamental accountability for safe operations and installations, workplace health and safety also has economic ramifications that may impact on rates. Safety failures can create significant liability for utilities, generating costs which may be passed on to ratepayers. This is equally true of workplace safety: inefficient or ineffective occupational health and safety practices may drive up operating costs, resulting in cost to ratepayers that might otherwise be avoided.

In practice, the Commission has held regulated entities accountable for safety in several ways for many years. For example, the Service Quality Indicators by which the Commission evaluates the performance of utilities operating under various forms of performance-based ratemaking include safety-related metrics – the All-Injury Frequency Rate (related to workforce safety) and Public Contact with Pipelines (in the case of gas utilities).

Other agencies also have a hand in ensuring workplace safety, but that does not mean a utility is not accountable on this score when it comes before the Utilities Commission. Unlike WorkSafeBC, the BCUC does not seek to remedy lapses in workplace safety standards by ordering a utility to modify specific operational practices, but a failure to operate safely can, quite properly, have immediate financial and other consequences for the company at the hands of the Commission. We will discuss this issue in greater detail, below.

BCUC jurisdiction with respect to safety at ICBC

We note that the order establishing this inquiry, and in particular Appendix B to the order, appears to expressly consider only safety issues pertaining to energy utilities. ICBC is, of course, not a “public utility” under the *Act* (per section 44(2) of the *Insurance Corporation Act*). However, the sections of the *Act* most directly relevant to this inquiry do apply to ICBC: sections 23(g) and 24 of the *Act* apply to ICBC, per section 44 of the *Insurance Corporation Act*.

ICBC is not statutorily excluded from the scope of this inquiry and we urge the Commission to include consideration of safety issues at ICBC in this inquiry.

Some of the issues the Commission has flagged in its discussion in Appendix B will not apply to ICBC, but others do. In particular, where ICBC, like any other regulated utility, inadequately protects employees' workplace health and safety, the resulting costs increase ICBC's overall operating costs which are passed on to basic insurance ratepayers.

MoveUP sees an important opportunity for the BCUC to address workplace safety squarely in its existing regulatory processes, including as these apply to ICBC, as part of fulfilling the BCUC's

core mandate of ensuring safe, efficient, cost-effective delivery of regulated services to British Columbians.

1. (a) Does the BCUC have the authority under the UCA to set standards, rules or regulations with respect to safety?

From the perspective of workplace safety, as we noted above, in our submission the general answer to this question is “no”.

WorkSafeBC has jurisdiction to set standards, rules, or regulations with respect to workplace safety. That is its area of prime expertise. What falls beyond the purview of WorkSafeBC, however, is the overall safety performance of a utility or ICBC in relation to the balancing of interests captured in the UCA.

There are matters regarding which WorkSafeBC’s minimum standards fall below the level that would optimize efficiency and cost-effectiveness for ratepayers. Thus, while the BCUC does not have authority to set standards, rules, or regulations, BCUC does have authority to require utilities to operate in a cost-effective manner including as regards its employees’ workplace health and safety.

2. Are there currently any legislative gaps in the oversight of public utilities with respect to safety?

MoveUP’s members identify several recurring gaps in the legislative and regulatory schemes meant to protect their occupational health and safety.

In general, these gaps arise where WorkSafeBC takes a reactive or claims-based approach to an issue, while a maximally efficient approach would be preventive and proactive. This reflects the fundamental difference between the roles of WorkSafeBC and the BCUC in relation to safety performance.

The gaps also arise because WorkSafeBC’s enforcement mechanisms hinge on employer liability for worker illness or injury. The workers’ compensation regime operates on a binary: an injury or illness is compensable or not. If it is compensable, the system has penalties intended to motivate the employer to operate more safely. If it is not compensable, it’s not the employer’s problem and there are no mechanisms in the system to motivate safer operations.

There are a great many workplace health and safety issues that impact productivity and efficiency but that do not rise to the level of a compensable claim. There are many things utilities can do to promote workplace health and safety that are not incentivized by WorkSafeBC, but that can improve efficiency and benefit ratepayers.

A preventive and proactive approach to the issues discussed below would improve worker health and safety, and would reduce the costs associated with worker unwellness such as sick pay, additional pay for replacement employees, workplace accommodations, disability management

programs, LTD premiums, and WorkSafe premiums. Healthy and safe workers are an asset to be invested in.

This is part of the general accountability of utility and ICBC management to demonstrate that they are operating the company in a prudent and cost-effective manner, in accordance with the regulatory compact (and the modified format of the compact that applies by statute to ICBC). Workplace health and safety issues impinge upon workforce costs and other drivers underlying revenue requirements proceedings before the Commission. All of this is familiar territory. The ratepayer impact of health and safety issues is not confined to compensable injuries for WorkSafeBC issues, and reaches more holistically into questions of workplace wellness.

Ergonomics

Ergonomics are poorly enforced in British Columbia. The *Occupational Health and Safety Regulation* (“OHSR”) requires all employers in the province, in all industries, to do the following identify, assess, and eliminate or minimize risks to workers of musculoskeletal injuries, and to annually evaluate the effectiveness of risk control measures and correct deficiencies without delay.

Outside industrial workplaces, this part of the regulation is rarely implemented and generally unknown to employers and workers. And yet musculoskeletal injuries like repetitive-strain injury are common in non-industrial workplaces. They are also very preventable through proper ergonomics.

MoveUP members observe that in their workplaces, their employers do not proactively identify risks, assess them, eliminate/minimize them, and report on them, as required by the *OHSR*. Their employers respond reactively to worker MSIs.

MSIs like repetitive strain injury can impose a significant cost on utilities: absence from work, sick time, LTD, lowered productivity, and adaptive equipment all have their attendant costs. Repetitive strain injuries can plague workers for years and be very difficult to resolve.

Preventing these injuries through proper ergonomics, on the other hand, is not nearly so costly.

MoveUP’s members report that their requests for a proactive approach to workplace ergonomics – particularly during the pandemic when so many are working from home – are generally not heeded by their employers.

Ultimately, these costs are borne by ratepayers. There is an alignment of interests between these workers, who would like to avoid developing MSIs, and ratepayers, who should not be bearing unnecessary costs related to preventable MSIs.

Worker Mental Health

MoveUP’s members also experience a gap in the area of workplace mental health and wellness. This is another area where WorkSafeBC’s systems and structures provide only a very minimal

level of protection. Regulated utilities could promote productivity and cost efficiency by exceeding these minimum protections and promoting a mentally healthier workforce.

Verbal abuse from customers

Many MoveUP members work in call centres or in person providing customer service for regulated utilities. They deal with angry, upset, or mentally unwell customers. They find that the supports they receive from their employers are generally inadequate.

Verbal abuse from customers is a particular problem for MoveUP members at ICBC. ICBC customers are often in significant distress when they call ICBC. Customers may have experienced a traumatic accident, or lost their livelihood, or suffered a brain injury. It is not uncommon for a caller to be irate or even suicidal.

When an employee reports an interaction of this kind with a customer, ICBC asks whether the employee felt physically threatened during the interaction. An investigation and fulsome response is engaged only if the employee reports feeling physically threatened. Where these interactions occur over the phone, employees generally do not feel physically threatened, and so no adequate or meaningful steps are taken to support them or to prevent future incidents.

Because the workers' compensation system is designed to deal with compensable claims, it does very little to incentivize employers to minimize this type of verbal abuse of their employees. This type of workplace stressor generally does not lead to a compensable injury, i.e. a specific psychological diagnosis that is caused at least in part by an incident at work. But that does not mean it doesn't have costs. Workers exposed to verbal abuse are more likely to take sick leave and to experience decreased productivity. These costs are ultimately borne by ratepayers.

Workplace Harassment and Bullying

Harassment and bullying in the workplace also rarely lead to compensable claims and thus fall in the gaps of workplace safety protections. However, these issues too result in increased costs related to absences from work and decreased productivity, which are borne by ratepayers. MoveUP members report inconsistent application and enforcement of Respectful Workplace policies. MoveUP members who experience harassment and bullying in the workplace suffer negative impacts on their mental health and are more likely to access sick time and LTD, which again result in preventable increased costs for ratepayers.

COVID-19 Safety

COVID-19 impacts and workplace safety measures have already arisen in several proceedings before the Commission, including BC Hydro's recent 2020-21 revenue requirements and FortisBC utilities' annual reviews and deferrals.

There is a range of responses to COVID-19 risks in workplaces across the regulated entities. While some employers acted quickly and proactively to ensure worker safety, others have been slower to respond.

MoveUP members report that in some workplaces, they are denied the option to work from home even where there is no justification for the denial. In other workplaces, they have been given inadequate PPE or denied reasonable requests for protection like plexiglass barriers between themselves and the public.

In still others, they have been instructed to perform tasks that they believe put them at direct risk of contracting COVID-19. An example is at the ICBC Driver Licensing Office in Metrotown: customers wait outside the office, i.e. inside the mall, and when too many of them were crowded together in this indoor space, ICBC employees were required to physically enter the crowd and spread people apart. Many of these members of the public were not wearing masks and could not be compelled to as they were technically outside the ICBC office.

COVID safety also falls in the gaps in the regime of workplace safety protections. WorksSafeBC requires employers to develop and implement safety plans, but the content of those plans is mostly left to employers to determine (subject to orders of the Provincial Health Officer). COVID-related absences, not to mention closures, can have a significant impact on regulated utilities' operating costs.

Failure to take sufficient measures to prevent COVID spread in public-facing workplaces is also an issue for the direct health and safety of the public. This is even more the case when it comes to energy utilities, whose employees or agents may be required to enter into customers' homes and businesses to carry out their functions.

Reactive Approach to Workplace Safety

MoveUP members working in regulated entities report that their employers take a reactive approach to safety issues. Generally workers find that there is a significant onus on them to prove that a safety risk exists before an employer will accept the responsibility to correct the problem.

To provide a specific illustrative example: in recent years at FBC's Prince George call centre, employees complained of a smell of diesel inside their workplace. FBC had the air quality tested twice and confirmed that the particulate levels were within a safe range, and refused to take any steps to improve air quality. The smell persisted and workers experienced headaches and other symptoms. After ongoing complaints, the employer finally took further steps to investigate and determined that the intake and output vents of the HVAC system were directly facing each other. The vents were relocated and the problem was solved.

In general MoveUP members find that greater resources are expended on disputing whether a problem exists than simply fixing it. Often an employer will not take action until WorkSafeBC becomes involved, at which point the employer may be risking liability that could have been prevented. For instance BC Hydro employees have raised a concern that BC Hydro's hearing

conservation program is out of date and not meeting WorkSafeBC's minimum standards, but BC Hydro has been reluctant to take meaningful action in the absence of a direction from WorkSafeBC requiring them to do so. In the meantime, workers risk losing their hearing which is both dangerous for workers, and potentially costly for ratepayers if and when workers make compensation claims.

A proactive approach to safety risks, aimed at identifying and eliminating risks early rather than waiting for compensable illness or injury occurs, is not only the right thing to do for worker safety; it is more cost effective for ratepayers.

3. Are there any areas of legislative overlap or duplication in the oversight of public utilities with respect to safety?

We are not aware of any areas of legislative overlap or duplication in this area. As we have noted, there are areas where other agencies also exercise jurisdiction with respect to a general subject-matter, but none of them duplicate the oversight role of the Commission.

4. Would a workshop in support of the Inquiry be beneficial and if so, what would an appropriate scope for a workshop include?

MoveUP agrees that a workshop of this nature would be beneficial. We suggest that the format of the session should centre on one or more panels incorporating stakeholders from diverse perspectives – regulated entities, customer representatives, workforce representatives, environmental advocates, and others. The agenda should capture the broad sweep of safety-related concerns within the Commission's mandate. It should be structured thematically to identify areas of concern, regulatory processes to address the concerns, and remedial avenues. The objective should be to chart a program for implementation that will bring greater clarity and focus to the Commission's work in this area.

CONCLUDING COMMENTS

MoveUP and the employees it represents thank the Commission for pro-actively raising these issues, which are obviously of great concern to them. We look forward to a process that will result in enhanced accountability and, in the end, safer communities and workplaces across the province.

All of which is respectfully submitted.

Yours truly,

ALLEVATO QUAIL & ROY



per **Susanna Allevato Quail**
Barrister & Solicitor