

12 November 2020

VIA E-FILING

Marija Tresoglavic
Acting Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3



Reply to:
ED@bcpiac.org
Ph: 604-687-3034
Our File: 7700.102

Dear Ms. Tresoglavic,

Re: British Columbia Utilities Commission - Inquiry into the Regulation of Safety

We make the following submissions in response to the Commission's Order G-241-20 (Exhibit A-1) on behalf of our clients, the group of community-based organizations serving a very large and diverse population of British Columbians known collectively in in this regulatory proceeding as BCOAPO or BCOAPO et al.

Below are BCOAPO's submissions on the questions requested by the BCUC.

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

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

BCOAPO submits that the *Utilities Commissions Act (UCA)* clearly and expressly bestows upon the Commission general supervisory power over all publicly regulated utilities, which, among others includes a broad authority to inquire into and regulate issues of safety engaged by all aspects of public utilities' activities when providing service to the public.

Sections 23(1)(c) and 23(1)(g)(i) of the *UCA* reproduced below explicitly grant the Commission the express authority to make Orders about safety devices and any matters that it considers necessary or advisable for the safety, convenience or service of the public:

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.
 [Emphases added]

And, while the law often the focus of creative and sometimes painfully strained interpretations, we cannot see how parties might argue credibly, absent persuasive caselaw stating otherwise, that section 23(2) of the *UCA* does not empower the Commission to make regulations requiring a public utility to conduct its operations in a way that does not cause unnecessary damage or inconvenience to the public.

We also note that, under section 38 of the *UCA* reproduced below, it is the Commission who should consider whether a public utility’s service provided to the public is safe in all respects:

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.

[Emphases added]

Section 25 of the *UCA* also provide the BCUC with the authority to determine what reasonable, safe, adequate, and fair service is and then to order the utility in question to provide it. In this respect, we also rely on the use of the word “must” in this section: an imperative, not permissive direction clearly expressed in the context of a piece of legislation with numerous other such statements clearly intending to empower the Commission to not only inquire into issues of safety,

but also to make enforceable orders to remedy practices or situations that offend its minimum requirements. One clear signal that these Orders are to be considered enforceable can be found in section 37 of the *UCA* which states:

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.

[Emphases added]

In addition, BCOAPO submits that, under section 26(a) of the *UCA*, the BCUC may set standards and rules to be used by a public utility:

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.

[Emphases added]

BCOAPO submits that the language of sections 26(a) and 23(2) of the UCA is broad enough to include Commission's power to make standards, rules and regulations with respect to safety.

Finally, although as the Commission has acknowledged that other regulatory bodies also have important safety mandates, the BCUC's powers with respect to the regulation of safety are not restricted by another Acts:

Powers of commission in relation to other Acts

110 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 set 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.

[Emphases added]

All together, these numerous provisions of the *UCA* form a persuasive contextual picture of the intention of those who drafted the legislation – one we would argue answers this first question with a firm “yes”.

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

At this time, BCOAPO has not identified any legislative gaps in the oversight of public utilities with respect to safety but we will be considering that question carefully after reviewing the submissions of all parties regarding this issue.

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

BCOAPO submits that in circumstances when public utilities' safety is the subject matter of various Acts and Regulations, as well as several regulatory bodies, it will inevitably result in some legislative overlap and duplication but that does not necessarily mean one tribunal can or should choose not to exercise its jurisdiction to inquire into those subjects when they are raised before them.

We note that, in 2006, the Commission declined to alter its process to consider evidence and arguments from the HTG, Sencot'en Alliance and Songhees First Nation alleging a failure by the Crown to satisfy its duty to consult and accommodate them as First Nations whose rights were affected by the VITR project, expressly relying on the fact that they had been satisfied that the EAO constituted another process in place to consider the issues of consultation and accommodation as justification¹. In the years to come, that deferral was challenged successfully in *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)*, 2009 BCCA 67 and *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 cases. While the Commission does not owe the First Nations peoples of British Columbia a duty of consultation, it does now clearly have the jurisdiction and duty to consider whether a duty to consult exists and whether efforts undertaken (if any) are sufficient to satisfy that duty.

At this point in the process, we urge the Commission to approach any preliminary arguments that might urge it to refuse to exercise what in answer to question one we argued is its clearly expressed jurisdiction to deal with issues of utility safety due to the existence of another tribunal or process that deals with it with extreme caution: *HC SVNT DRACONES*.

At this time, we do not have a comprehensive list of areas of overlapping jurisdiction but suggest that this issue should be further examined during a workshop.

¹ *Application for a Certificate of Public Convenience and Necessity for the Vancouver Island Transmission Reinforcement Project Decision* (BCUC, 7 July 2006, Order No. C-4-06), page 48-9.

4. Would a workshop in support of the Inquiry be beneficial?

(a) If so, what would an appropriate scope for a workshop include?

BCOAPO supports a workshop as part of the Inquiry process. We suggest it would be beneficial to include in a scope of the workshop the following topics:

- 1) Potential safety issues which call for developing BCUC's standards, rules or regulations with respect to safety;
- 2) Legislative gaps in the oversight of public utilities with respect to safety;
- 3) Other regulators' roles in the regulation of safety and jurisdictional overlap related to safety between various regulators; and
- 4) The potential legal risks in declining to exercise a legally granted jurisdiction to oversee important issues like safety.

All of which is respectfully submitted.

BC PUBLIC INTEREST ADVOCACY CENTRE

Original on file signed by

Leigha Worth
Executive Director | General Counsel

Original on file signed by

Irina Mis
Staff Lawyer