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VIA ELECTRONIC MAIL

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

Dear Sirs/Mesdames:

**Re: British Columbia Utilities Commission - Inquiry into the Regulation of Safety ~
Project No. 1599100**

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "CEC").

The CEC represents the interests of ratepayers consuming energy under commercial tariffs in applications before the British Columbia Utilities Commission ("BCUC" or "Commission").

By Order G-241-20, dated September 23, 2020, the BCUC established an inquiry to examine the role of the BCUC in the Regulation of Safety (the "Inquiry").

In Appendix B to Order G-241-20, the BCUC described its responsibility for ensuring safe and reliable energy supply at fair rates for energy users across the province. The BCUC concluded that it is essential for the BCUC to seek clarity on its jurisdiction over safety.

By Order G-342-20, the BCUC determined that further examination of its mandate with respect to safety was required.

The BCUC established a two-stage approach.

Stage 1 focuses on:

- (1) the nature and extent of the BCUC's jurisdiction to regulate the safety of public utilities under the Utilities Commission Act ("UCA");

- (2) the conditions, if any, under which the BCUC can forbear from regulating the safety of public utilities within its jurisdiction, as allowable under the UCA; and
- (3) setting out a framework of key principles to guide the BCUC in carrying out its safety-related duties.

Stage 2 would explore the application of this framework and would culminate in a final report.

The BCUC identified a set of 6 sub-issues for review in Stage 1. The listed sub-issues do not limit the scope of intervener submissions but provide a framework for comments.

The sub-issues include:

- (1) Keeping Informed;
- (2) Scope of the BCUC's Safety Mandate;
- (3) Safety in BCUC Adjudications;
- (4) Effects of BCUC Safety Regulation on Regulatory Burden;
- (5) Regulatory Gaps; and
- (6) Regulatory Overlaps.

The following provides the CEC views on the Commission's set of sub-issues.

SUB-ISSUE 1 - KEEPING INFORMED

1) What are the minimum requirements the BCUC must have in place to ensure the BCUC is informed of matters relating to public utility safety?

The CEC recommends that the BCUC adopt a conceptual framework such as the following for its oversight responsibilities in regard to safety:

- Integration of BCUC Oversight with Other Safety Organizations and Agencies Processes
- Definition of Safety (unsafe outcome) (hazard with regard to safety)
- Measurement & Track of Safety
- Reporting Cycle to the Commission
- Review and Improvement of Safety Oversight System

- Identifying Improved Safety Strategies and Implementation (effectiveness) (cost-effectiveness)
- Compliance with Other Safety Organization Requirements & Guidance

2) **How should the BCUC keep itself informed of matters relating to public utility safety?**

a) **Should public utilities provide regular reporting to the BCUC on safety-related matters? If yes, on what frequency?**

The CEC submits that it is reasonable for public utilities to provide regular reporting on safety-related matters to the BCUC.

The CEC would consider it appropriate for utilities to provide either an annual or bi-annual (two years) safety reporting to the BCUC.

The CEC would expect that safety could be incorporated into other applications before the Commission and or perhaps should be a separate direct reporting.

For instance, Revenue Requirements applications and CPCN applications and other Expenditure schedule applications could include standard sections on safety, but a single specific report might serve the Commission better.

b) **Should public utilities provide ad hoc reporting to the BCUC in the event of a serious incident, such as fatality, personal injury, significant damage to infrastructure, sabotage or other illegal activity requiring police involvement, etc. If yes, within what timeframe should ad hoc reports be required?**

Yes. The CEC submits that the BCUC should keep itself currently abreast of serious incidents occurring in the public utilities.

The CEC submits that reporting could be conducted within 7 days of a serious incident, and a day-of incident report when it is a significant and serious safety incident.

c) **Should public utilities notify the BCUC if they are in breach of safety specific regulatory requirements or if there is a safety violation? If yes, within what timeframe should notifications be required?**

Yes. The CEC submits that it is appropriate for the Commission to keep itself abreast of safety-related violations or breaches of safety specific regulatory requirements.

The CEC recommends that such reporting could be conducted within 3 months of the utility becoming aware of the violation, for minor violations, and within 7 days for serious and material violations.

The CEC submits that it could be appropriate for the Commission to develop a series of thresholds such that reporting focuses on violations that could result in significant damage.

- d) Should public utilities notify the BCUC if they have received a safety-related administrative penalty, or had a work site shut down? If yes, within what timeframe should notifications be required?**

Yes. The CEC recommends that public utilities should notify the BCUC if they have received safety-related administrative penalties or had a work-site shutdown.

The CEC submits that reporting could occur within 7 days of the issuance of the shutdown or penalty.

- e) Should the BCUC rely on other agencies with jurisdiction over public utility safety to keep the BCUC informed on matters relating to their jurisdiction? If yes, what steps might the BCUC take to ensure it receives such information from the other agencies?**

In the CEC's view it would be worthwhile for the BCUC to receive reports from the utility on matters that relate to safety, including any matters which are the subject of other agencies concerns and regulation. However, it is not necessary to receive reporting from both sources.

- f) Should the BCUC rely on complaints to keep itself informed about public utility safety matters?**

No. The CEC submits that the BCUC has a duty to oversee, and keep itself informed, of the overall management of the utility, which includes safety.

While certain aspects of utility management can be reviewed through the complaint process only, relying solely on the complaint process could result in significant gaps, in that it depends on individuals or other entities to identify the issue and bring it to the Commission's attention. The CEC submits that this approach could result in safety risks that are not evident to the public, and may not be adequate to address issues at a sufficiently early stage.

While the Commission does address certain elements of concern through the complaint process, the CEC notes that the complaint process frequently serves as an adjunct to other, regular reviews. For instance, the Commission may receive complaints related to price or terms, but also regularly reviews these items in formal revenue requirements, rate design reviews or other proceedings.

- g) Should the BCUC rely on BCUC-generated questions to public utilities, such as compliance letters, to keep itself informed about public utility safety matters?**

The CEC expects that developing a set of key metrics for regular reporting would be an important aid to the Commission in overseeing the safety-related aspects of the public utility operations.

The CEC submits that it would be reasonable for the Commission to work with the public utilities and intervenors to create a set of metrics for regular reporting and review. The CEC is currently engaged with BC Hydro's metrics and measurement processes and expects to have consultation input to BC Hydro's versions and contributions to the Commission's requirements.

The CEC submits that reviewing safety-related metrics could occur as a separate item in the revenue requirements applications or in specific reviews from time to time as the Commission may deem necessary.

- h) Section 37 of the UCA states, in part, that the BCUC may appoint a supervisor or inspector to inspect “the system, works, plant, equipment or service of a public utility with a view to establishing and carrying out measures for... the safety of the public and the users of the utility’s service.” Should the BCUC rely on appointing inspectors and/or supervisors to keep itself informed about public utility safety matters?**

The CEC would support the appointment of an internal to the BCUC supervisor of safety oversight for public utilities.

The CEC would expect that the supervisor of safety oversight could provide annual reporting of deficiencies to the Commission and could also serve to receive reports of violations from other agencies or other safety-related complaints and provide vetting to determine if they should come before a public hearing process.

- i) Are there any instances where the BCUC should not be informed of safety-related items? If yes, what specific scenarios and why?**

The CEC expects that there are many minor safety issues that do not need to be relayed to the BCUC or addressed in the Commission's oversight.

- 3) Should the BCUC require public utilities to include certain safety-related information in their annual reports to the BCUC?**

- a) If yes, what safety-related information should be required? For instance, should information on safety-related expenditures; safety metrics; reliability metrics; incident reporting; leading indicators; safety violations; and/or administrative penalties be required?**

The CEC submits that the Commission should have regular reporting to its oversight processes and that all of the above could be appropriately included in the regular oversight reporting to the BCUC. The above list of items should not be considered exhaustive and the complete content

should evolve in response to the development of the Commission's safety oversight process becoming a serious and useful addition to the public interest in utility safety.

SUB-ISSUE 2 – SCOPE OF THE BCUC'S SAFETY MANDATE

- 1) Do the categories of asset safety, worker safety, and public safety encompass the extent of the BCUC's mandate with respect to public utility safety?**

No. See 2 below

- 2) Should the safety of the environment be more explicitly considered?**

Yes. The CEC submits that it would be appropriate to consider the impact to the environment explicitly in assessing the extent of the BCUC's mandate with respect to public utility safety. While the environment could be incorporated into an assessment of the public safety, or asset safety, the CEC considers that the significance of the potential impacts to the environment from public utility activities warrant independent consideration, particularly given the extent and growth of the climate emergency now occurring and considering the fragility of the environment in regard to human activity.

The CEC submits that the categories of asset safety, worker safety, public safety and environmental safety adequately cover the BCUC's mandate with respect to public utility safety.

- 3) Are there other categories of safety that the BCUC should consider? For example, what, if any, consideration should the BCUC give to customer safety and/or the safety of energy supply?**

The CEC expects that the vast majority of safety considerations can be incorporated into the categories of asset safety, worker safety, public safety and environmental safety.

In the CEC's view, customer safety would be included in public safety to the extent that they are exposed to risk from any utility activities and would warrant a distinct sub category within public safety.

The CEC would consider the safety of energy supply to be incorporated into asset safety, and would warrant a distinct sub-category within asset safety.

SUB-ISSUE 3 – SAFETY IN BCUC ADJUDICATIONS

- 1) How should public utility safety be considered in expenditure schedule applications before the BCUC?**

- a) **Should safety be considered in all expenditure schedule applications? If yes, should there be a standardized approach for evaluating safety risks across utilities?**

The CEC submits that safety could be considered in expenditure schedule applications where the probability and consequence of risks exceed a minimum impact threshold, as determined by the Commission.

The CEC is of the view that in general a standardized approach across all utilities would be suitable, in that the importance of reducing/minimizing risk to workers, assets, public safety and the environment is not related to the size or underlying capabilities of the utility.

The CEC notes that risks vary between the utilities based on the form of energy provided. For instance, FortisBC Energy Inc. must manage a set of risks related to natural gas that may not be required of BC Hydro as a provider of electricity, and vice versa.

The CEC would therefore expect that while a standardized approach would be useful, the specifics would vary by the type of utility being considered.

- b) **Should minimizing worker, asset, and/or public safety risks be a criterion in the BCUC's determination of the public interest?**

Yes. The CEC submits that the Commission must by law take an all-inclusive view of safety and many other issues affecting the public, which would include minimizing worker, asset, and public safety risk as a fundamental component of the public interest.

The CEC generally presumes that the utilities are capably managing worker, asset, and public safety risks in all of their applications. The CEC notes that environmental risks are often explicitly addressed in applications such as CPCNs or expenditure schedules. Asset safety and/or worker safety may often be subjects in utility applications, and as such may be considered explicitly, as well as in the general test of the public interest.

The CEC submits that where worker, asset, public safety or environmental risk is not explicitly addressed in an application, it is reasonable for the Commission to include such factors in its public interest consideration with respect to utilities.

- 2) **How should public utility safety be considered in RRAs before the BCUC?**

- a) **Should safety be considered in all RRAs?**

Yes. The CEC submits that a utility appropriately managing its safety-related issues is an important underpinning of the utility's revenue requirements.

The CEC expects that the approved revenue requirements should allow for and ensure that safety matters are adequately addressed. To the extent that the utility is not able to demonstrate that its

activities are adequate with respect to worker, asset, public and environmental safety, the Commission may need to regulate safety expenditures in its balancing of the overall revenue requirement requested.

b) Should public utilities be required to separately identify safety-related expenditures?

No. The CEC submits that many expenditures may have multiple purposes and need not be identified as serving a particular element of the public interest.

To the extent that the utility is able to adequately demonstrate that it is in compliance with safety requirements and/or is improving its overall safety performance, the CEC considers that the safety reporting itself is the paramount requirement for the Commission's oversight. This, however, should not relieve the utility, sometimes, from making estimates of the costs related to achieving safety outcomes and enabling reviews of the cost-effectiveness of its strategies and reviews of the same by the Commission in its oversight role.

c) Should public utilities be required to identify any safety-related administrative penalties?

Yes. The CEC submits that it would be difficult for the BCUC to adequately oversee the public interest in safety if it does not have access to the extent of issues and penalties faced by a utility.

d) How should the BCUC review safety-related expenditures and what level of information should be required?

The CEC submits that the review of safety-related expenditures can be adequately done in the utility's RRA or Expenditure Schedule processes, but that specific review of estimates related to the cost-effectiveness of the utility's strategies would be valuable and incorporated into the Commission's overall safety oversight processes.

e) Should the reasonableness and appropriateness of a public utility's safety-related expenditures be a criterion in the BCUC's determination of whether a public utility's rates are just and reasonable?

Yes. The CEC submits that the Commission has a broad responsibility in its rate setting to incorporate public interest issues into its determination and safety would naturally be a high priority set of concerns to be incorporated.

3) How should public utility safety be considered in LTRP applications before the BCUC?

a) Should safety be considered in all LTRP applications?

Yes. Long Term Resource Plans should explicitly include information addressing how worker, asset, public safety and environmental safety will be protected over the long term, and in the plans provided.

Such information can be provided in a dedicated sections of the LTRP, which is being done by many utilities already.

- b) Should a public utility's long-term plans for addressing worker, asset, and/or public safety risks be a criterion in the BCUC's determination of the public interest?**

Yes. Including sections on safety issues in the LTRP can ensure that the BCUC reviews the issues in its assessment of the long-term public interest related to the LTRP.

- 4) How should public utility safety be considered in CPCN applications?**

- a) Should safety be considered in all CPCN applications?**

Yes. The CEC submits that safety, as a public interest, should always be a consideration in CPCNs and frequently has been.

- b) Should the BCUC's CPCN Guidelines be updated to include safety as an item that must be addressed in a CPCN application? If yes, should the guidelines include a standardized approach for evaluating safety risks across utilities?**

Yes. The CEC submits that while many aspects of safety will be utility-specific, the Commission's oversight processes and certain aspects of understanding safety, such as metrics, should have standardized elements which would be useful to the Commission and the public interest. Many of these standardized elements already exist in some form and the Commission can build on these elements.

- c) Should minimizing worker, asset, and/or public safety risks be a criterion in the BCUC's determination of the public interest?**

Yes. The CEC submits the Commission is already obligated to consider safety as a public interest.

- 5) How should safety be considered in any other applications that the BCUC may receive?**

No. The CEC expects that so long as the BCUC has a comprehensive oversight process for its safety-related responsibilities it should, in coordination with utilities and intervenors, find the most appropriate places and timings in its regulatory processes for exercising its oversight to enable cost-effective regulatory oversight.

SUB-ISSUE 4 - EFFECTS OF BUC SAFETY REGULATION ON REGULATORY BURDEN

- 1) **How would incorporating safety into the BCUC's reporting requirements impact the regulatory burden placed on public utilities?**
 - a) **Do opportunities exist to leverage existing reporting processes (e.g., reports required by other regulatory bodies) to minimize the cost and/or administrative burden associated with reporting to the BCUC? If yes, what?**

The CEC submits that incorporating safety into the BCUC's reporting requirements need not place a significant burden on the public utilities, as they are typically incorporating these considerations in their management of the utility; to the extent these are not incorporated already, it would be effective and important for the Commission to incorporate these public interest issues into its decisions.

The CEC notes that utilities may already be subject to significant reporting requirements with other regulatory bodies, and the BCUC's incorporation of these processes into its regulatory oversight processes would avoid undue duplication.

- 2) **What factors should the BCUC consider when determining the safety reporting requirements for public utilities? For example, should reporting requirements be tailored to the level of safety risk and/or consequences?**

Yes. The CEC submits that safety issues all have in common a potential safety outcome impact, which is properly defined in terms of the probability of occurrence and the nature of the consequence. Without understanding the potential outcomes of safety issues, the Commission's oversight process would be blind and not in the public interest.

- 3) **How would incorporating safety into BCUC adjudications impact the regulatory burden placed on public utilities?**

The CEC submits that the Commission will be managing the appropriate level of regulatory burden as it designs and develops its oversight process. Regulatory burden is not inherently good or bad, but is contextual. Where the Commission's oversight processes add cost effectively to the safety of utilities in the public interest, the regulatory burden is an essential component of improvement. The CEC's framework at the beginning of this submission incorporates a feedback process for refining the Commission's oversight processes exactly for this purpose of ensuring their cost-effectiveness.

- a) **Do opportunities exist to leverage existing review processes (e.g., approvals required from other regulatory bodies) to minimize the cost and/or administrative burden associated with considering safety in BCUC adjudications? If yes, what?**

Yes. The CEC submits that the Commission can optimize its oversight processes through the utilities by integrating other agency regulation information into its overall oversight processes thereby avoiding undue duplication.

- 4) **Does the size of a public utility have any bearing on how the BCUC should regulate safety?**
- a) **If yes, how?**

Yes. However, the CEC has submitted that safety concerns, in the public interest, are not diminished or changed by the size of the utility and should be adjudicated by the Commission commonly in relation to their potential impacts on the safety issues being considered.

SUB-ISSUE 5 - REGULATORY GAPS

- 1) **In circumstances where there is no regulatory body specifically empowered with authority for public utility safety, for example due to purposeful exemptions from other safety-related legislation or emerging technologies, does responsibility for safety oversight fall to the BCUC pursuant to section 23(1) of the UCA?**

Yes. The CEC considers that the BCUC has broad oversight powers with accompanying responsibilities. Where public safety could potentially be compromised by utility activity, and there are no other authorities governing the safety of the technology or other elements, the CEC submits that it falls to the BCUC to undertake a general responsibility for these concerns, but not necessarily to develop specific regulations or specialized metrics for compliance.

The CEC would expect that the Commission would inform itself of which governing bodies might ultimately be expected to oversee safety-related issues for emerging technologies and ensure that the public utilities would be working cooperatively with the appropriate body to ensure safe practices until the relevant protocols are established and or providing interim solutions to the Commission.

- a) **If not, why not?**

N/A

- b) **If not, who is responsible for providing safety oversight in these instances?**

N/A

SUB ISSUE 6 - REGULATORY OVERLAPS

- 1) **Does the existence of another regulatory body with overlapping jurisdiction relieve the BCUC of its responsibility under the UCA for safety oversight over that aspect of a public utility's work?**

No. The CEC's view is that the Commission has broad oversight and responsibility for the safe operation of the public utility. However, the Commission does not necessarily have the requisite expertise to adequately oversee all areas in which there may be safety-related concerns and may defer to agencies with greater specific expertise and jurisdiction as appropriate for its overall oversight responsibilities.

However, the Commission should regularly assure itself that the public utility operators are complying with all safety-related protocols established by regulatory bodies with overlapping jurisdiction.

The CEC expects that the BCUC should receive regular safety compliance reports from public utility operators as part of its safety oversight processes.

- a) **If yes, what specific provisions of the UCA allow for such forbearance? Should the BCUC consider exemptions in certain circumstances?**

N/A

- b) **If yes, is there any safety-related reporting the BCUC ought to continue to receive despite such forbearance, either from the other regulatory body or from the public utilities?**

N/A

- c) **If not, how should the BCUC work with other agencies with overlapping jurisdiction? For example, are formalized working relationships required?**

The CEC recommends that the BCUC not engage in specific formalized relationships with the other safety agencies as this would be duplicative of the utility's safety management relationship with these agencies. Instead, the CEC recommends incorporating those agencies through the utility's reporting into the Commission's oversight processes.

- d) **If not, how can the BCUC ensure regulatory efficiency whilst also ensuring it keeps itself informed?**

The CEC recommends that by placing the responsibility on the utilities to provide the other agency information regarding their regulation of safety the Commission can both keep itself informed and ensure regulatory efficiency. The Commission can always make exception where

there is a specific need to improve its oversight processes, which the utilities may be unable to support.

2) What is a reasonable level of information that should be provided to the BCUC regarding public utility compliance with safety matters overseen by another regulatory body?

The CEC recommends that the Commission's processes for identifying the seriousness and materiality of safety issues would represent the best way of determine what information regarding compliance with other regulatory body's requirements.

3) Should the BCUC be notified of safety violations that occur under the jurisdiction of other regulatory bodies?

Yes, the BCUC should be notified of safety violations that occur under the jurisdiction of other regulatory bodies to the extent that they are material and serious according to the Commission's oversight thresholds.

The CEC submits that the BCUC could not provide global oversight and review of the utility, nor properly assess applications coming before it if it cannot assure itself of the safety of the operations. For instance, it may be inappropriate for the Commission to approve any number of projects or costs if the utility is not in compliance with various applicable safety regulations.

4) Should the BCUC assess or ensure that public utilities comply with safety regulations that are under the jurisdiction of another regulatory body?

Yes. See 3 above

5) If a public utility is not in compliance with another regulatory body's safety regulations, what responsibility and/or authority, if any, does the BCUC have to take action?

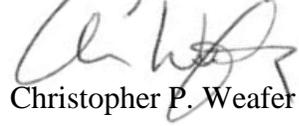
The CEC submits that the BCUC has broad responsibility and authority for ensuring the safe operation of public utilities and may act accordingly based on its views of the issues.

The CEC expects that the BCUC could require the utility to take compliance actions and demonstrate adherence to relevant safety regulations to the extent that the utility is seriously and materially not in compliance with relevant safety regulation.

All of which is respectfully submitted.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/jj

cc: CEC

cc: Registered Interveners